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CALIFORNIA LAWS

PAMPHLETS

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THE

GENERAL STREET LAW

OF CALIFORNIA,

AS AMENDED IN 1889

AND IN 1891.

WITH

ANNOTATIONS

BY

A MEMBER OF THE CALIFORNIA BAR.

COMPLIMENTS OF

GLADDING, McBEAN & Co.

1358 & 1360 MARKET STREET,

San Francisco, Cal.

1891.

Tribune Publishing Co., Printers, Bookbinders and Stereotypers, Oakland, Cal.

Note Street Bond System, pages 44 to 53.

ERRATA.

Page

11. In fourth line of notes, read "or a bond"

26. In fourth line of Form of Warrant, read "as said Superintendent"

26. At close of twenty-second line, instead of "mortgage" read "warrant"

27. At close of ninth line, read "illegality in any"

31. In ninth line, read "provided in said section"

37. In seventh line, read "while carefully using"

37. In tenth line, for "herein" read "therein"

PREFACE.

This annotation of the General Street Law, as amended in 1889 and 1891, attempts only to clarify the text where that is not perfectly clear, or where the meaning has been disputed, and has received judicial settlement. It aims to prevent mistakes in proceedings where mistakes have been usual, or are most likely to be made. Forms for the chief proceedings are inserted, which have already been sustained in litigated cases. But no number of notes and of forms will prevent errors, unless the reader also studies carefully the unannotated parts of the text. This he is presumed to do. Unless he does it, nothing will avail him.

THE ANNOTATOR.

MAY 1ST, A. D. 1891.

AN ACT

TO PROVIDE FOR WORK UPON STREETS, LANES, ALLEYS, COURTS, PLACES, AND SIDEWALKS, AND FOR THE CONSTRUCTION OF SEWERS WITHIN MUNICIPALITIES.

[Approved March 18, 1885. Amended March 14, 1889, by Chapter CLI. Also March 17, 1891, by Chapter CXIV, and March 31, 1891 by Chapters CXLVII and CCXLIV.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

PART I.

What streets, etc., are subject to the jurisdiction of the Act.

SECTION 1. All streets, lanes, alleys, places or courts, in the municipalities of this State now open or dedicated or which may hereafter be opened or dedicated to public use, shall be deemed and held to be open public streets, lanes, alleys, places or courts, for the purposes of this Act, and the City Council, of each municipality is hereby empowered to establish and[1] change the grades of said streets, lanes, alleys, places or courts, and fix the width thereof, and is hereby invested with jurisdiction to order to be done thereon any of the work mentioned in section two of this Act, under the proceedings hereinafter described.

GENERAL NOTE.—This Act was for the first time decided by a majority of the Supreme Court in *Thomason vs. Ashworth* (73 Cal., 73) to be constitutional, a general law, and in force throughout the State. Of course it is the only street law in municipalities which did not exist previous to 1880 under special charters or street laws. But in municipalities which had such charters or street laws, it must be remembered that all charter or special street law provisions that have not been affected by Sec. 19 of Art. XI. of the Constitution, or by the respective General Street Acts of 1883, 1885, 1889, and 1891, still remain. The late decisions and that in *Thomason vs. Ruggles* (69 Cal., 465) settle these facts: (1) That the New Constitution tore out of each charter or street law existing January, 1880, every provision or scheme of street work inconsistent with Sec. 19 of Art. XI. of itself; (2) That the General Street Act of March 6th, 1883, next repealed everything in such charters that was inconsistent with any part of itself, and thus struck out many sections which had not been touched by the Constitution; and (3) that the General Street Act of 1885, as amended in 1889 and 1891, which was passed after the Constitution had been amended, repealed the Act of 1883, and provided a complete scheme for street work which further denuded special charters of all street provisions inconsistent with itself, and left in such charters or special street laws only the provisions for which the Acts of 1883 and 1885 established no substitutes, and such as were self-executing and not a necessary part of the general scheme of street work. The street provisions which still remain in force in any charter existing in 1880 are therefore very few and need to be looked for only in the rare instances where the Acts of 1883, 1885, 1889 and 1891 are silent. It may also be fairly deduced from these decisions that any special charter provision as to the *mode* of making payments from the city treasury for the cost of street work in front of city parks, squares, etc., or such as the city may elect to pay out of its treasury under Sec. 26 of this Act, still remains in force. A notable instance of this is the "One-Twelfth Act," relating to San Francisco.

SECTION NOTES.

SEC. I. 1 Changes of grades must be hereafter in the special mode of Chapter CCXLIV, ending the amended text.

When and what kinds of street work may be ordered.

SECTION 2. [1]Whenever the public interest or convenience may require, the City Council is hereby authorized and empowered to order the whole, or any portion, [2]either in length or width, of the streets, avenues, lanes, alleys, courts, or places of any such city graded or [3] regraded to the official grade, planked or replanked, paved or repaved, macadamized or re-macadamized, graveled or regraveled, piled or repiled, capped or recapped, sewered or resewered, and to order sidewalks, manholes, culverts, cesspools, curbing, and crosswalks to be constructed therein, and to order any other work to be done which shall be necessary to complete the whole or any portion of said streets, avenues, sidewalks, lanes, alleys, courts, or places, and it may order any of the said work to be [4]improved.

SECTION 3. Before ordering any work done or improvement

SEC. 2. 1 It is safer that the City Council shall expressly declare that the work proposed is required by the public interest and convenience. This belongs to its second proceeding (the order of work), and is inserted in the form recommended therefor in Note 2 of Sec. 5. Expressing it in the Resolution of Intention, is premature if harmless. The power is granted as contemporaneous with the actual Order, not with the *Intention* to Order.

2 This, meaning exactly what it says, allows work to be ordered for less than the width of the roadway or street, and for any defined part of a block in length. There is no limit to the length of the proposed work, except that it must be confined to *streets*, etc.—that is, it must not include any extension, like the discharge of a sewer, over private property. The jurisdiction of the Council is expressly limited to *streets*, etc. There is nothing expressed in this Act to prohibit the Council from ordering work on one street and extending it, as one proceeding, over part of an intersecting or virtually continuing street.

3 Regrading is when a street degraded by use is brought back again to the *same* grade. But if the grade of the street has been officially changed meanwhile by ordinance, regrading is not the proper word. The work will then be as in the first instance, grading to the official grade. This applies also to the kinds of work next mentioned—planking, paving, etc.

4 "Improved" is here used in its most technical sense, *i. e.*, the restoration, or enlargement, or completion of work once done on the same grade. In common speech and frequently through this Act, the word is applied also to work in the first instance. (See Second Subdiv. of Sec. 34). But whenever work is to be ordered, after the first instance, and on the previous grade, and adds certain things to complete the street, it is better that the order of work should read "to improve .... Street by (*describe all the kinds of work that compose the improvement.*")

SEC. 3. 1 *The following Form is recommended for the Resolution of Intention:*

"*Resolved*, That it is the intention of the ..... of the .....of ..... to order the following street work to be done, to wit: that .....Street in said ..... from the. ....line of Street to the .....line of.....Street, [except such portion thereof as is required by law to be kept in order or repair by any person or company having rail road tracks thereon] be (*here insert any of the different kinds of work mentioned in Sec. 2, describing them by apt, unambiguous words and with such precision that everything is fixed at this time by the Council and* NOTHING *is left to the discretion of the Engineer or Street Superintendent, except what is always said without saying, that they require compliance with the specifications*). The ..... is hereby designated as the (*daily, semi-weekly, or weekly*) newspaper published and circulated in this city in which this Resolution of Intention shall be published for two days and the notice thereof for six days, as often as said newspaper is issued therein. The Clerk of this .... is hereby directed to publish therein and post this Resolution for two days conspicuously on or near the chamber door of said ....

Adopted. 189

(NAME.) Clerk of said Council

(Original of Resolution with Ayes and Noes certified by President and Clerk).
(Published and posted Resolution signed officially by the Clerk but not needing Ayes and Noes or President's signature).

made, which is authorized by section two of this Act, the City Council shall pass a [1]resolution of intention so to do, and describing the work, which shall be posted conspicuously for two days on or near the chamber door of said Council[2], and published by two insertions in one or more daily, semi-weekly, or weekly newspapers published and circulated in said city, and designated by said Council for that purpose. The Street Superintendant shall thereupon cause to be conspicuously posted along the line of said contemplated work or improvement, at not more than [3]one hundred feet in distance apart, but not less than three in all, or when the work to be done is [4]only upon an entire crossing or any part thereof, in front of each quarter block and irregular block liable to be assessed, notices of the passage of said resolution. [5]Said notice shall be headed, "Notice of Street Work," in letters of not less than one inch in length, and shall, in legible characters, state the fact of the passage of the resolution, its date, and briefly the work

Resolution of intention.

Published and posted.

Posting notices on the street.

Wherever *railroad tracks* are laid in the street of contemplated work, the following exception should be written into the Resolution of Intention before the word "be" in the fifth line of this note: "*Except such portion thereof as is required by law to be kept in order or repair by any person or company having railroad tracks thereon.*" Section 7 (Subdivision One) of the Act expressly inhibits any assessment or attempt to acquire jurisdiction thereon *under the General Street Law*, which assesses only that realty which has frontage on the proposed work. The Civil Code and Railroad Franchises and Sec. 43 of Part IV of this Act provide the only means for compelling railroad companies to do their own work at their own cost.

The Resolution of Intention requires more precision and care than any other proceeding of the municipal legislature. From it alone is jurisdiction derived. If it is fatally defective, all subsequent proceedings, however regular in form, are without jurisdiction, and are absolutely void. The precision required in it does not, however, extend to such amplification of detail as is needed in the specifications, whether general or special. These specifications must be adopted before the order of work. It is safer to have them precede the Resolution of Intention also, but that it is not absolutely necessary. Yet, however general may be the work named in the Resolution of Intention, the limits of points between which work is to be done must be clearly fixed from the outset. For instance: It may be sufficient to declare an intention to construct culverts and crosswalks in intervening crossings, and afterwards, in the order of work, specify how many crosswalks and culverts shall be constructed in each of the crossings. Each crossing may have a peculiar requirement. Whatever these may be they must be specified by the City Council as its own conclusion. Nothing must be left subject to variation or the discretion of any city official or the contractor. The Council is supposed to be acting always under the advice of the Engineer or Street Superintendent, and thereafter neither official has the power to make changes. No such phrase as "where necessary" can be allowed to creep into any street resolution of the Council. Those two fatal words have invalidated street assessments in the city of San Francisco alone to the amount of more than half a million of dollars. But the decisions are that the words "where not already done" are sufficiently certain to support a contract.

Where work is intended to be under the Street Improvement Bond System, the Resolution of Intention must especially refer to that System. An additional form for this is given in Note 1 of Sec. 39 in Part IV.

2. Under the Amendments of 1891, this is now the only posting required of the *text* of the Resolution of Intention. It is done by the City Clerk, under direction of the Council.

3. The distance of "300 feet apart" is amended in 1891 to read "not more than 100 feet."

4. The posting for proposed work on crossings is now confined to work proposed on a single crossing. For work on both frontage and crossings, the posting need be only 100 feet apart, without extra notices on the quarter blocks.

5. The following form is recommended for the Notices of Intention both as posted and published by the Street Superintendent, who acts under the mandate of this Act and needs no repetitious direction by the Council.

or improvement proposed, and refer to the resolution for further particulars. He shall also cause a notice, similar in substance, to be published for six days, in one or more daily newspapers published and circulated in said city, and designated by said City Council, or in cities where there is no daily newspaper, by one insertion in a semi-weekly or weekly newspaper so published, circulated, and designated. In case there is no such paper published in said city, said notice shall be posted for six days on or near the chamber door of said Council, and in two other conspicuous places in said city, as hereinafter provided. The owners of a majority of the frontage of the property fronting on said proposed work or improvement, where the same is for one block, or more, may make a written objection to the same within ten days after the expiration of the time of the publication and posting of said notice, which objection shall be delivered to the Clerk of the City Council who shall indorse thereon the date of its reception by him, and such objections so delivered and indorsed shall be a bar for six months to any further proceedings in relation to the doing of said work, or making said improvement, unless the owners of the one half or more of the frontage, as aforesaid, shall meanwhile petition for the same to be done. At any time before the issuance of the assessment roll, all owners of lots or lands liable to assessment therein, who, after the first publication of said resolution of intention, may feel aggrieved, or who may have objections to any of the subsequent proceedings of said Council in relation to the performance of the work, mentioned in said notice of

Publishing notice

Frontage owner's written objections barring the work.

Other form of remonstrance by petition

NOTICE OF STREET WORK.

Notice is hereby given that the .. .. of the .. .. .. of .. .. .. on the .. .. .. day of .. .. .. 189 .. adopted a Resolution (Number ..) of its intention to order the following street work, to-wit: That .. .. .. street from the .. .. line of. .. .. Street to the. .. .. line of .. .. Street, [except such portion thereof as is required by law to be kept in order or repair by any person or company having railroad tracks thereon] be (*here state briefly a condensation of the kinds of work mentioned in the resolution. All such kinds must be specified, but not necessarily the details. For instance, if the resolution details all the street crossings on which crosswalks are to be laid, this notice can omit such details but must use the general term "crosswalked"*)

For further particulars of said work, reference is hereby made to said Resolution on file. .. .. Cal .. .. 189 ..

.. .. .. SUPERINTENDENT OF STREETS of .. .. of ..

The number of these notices should not be stinted. Nor can any of the requirements as to posting and their form be disregarded or made less than is exactly written. It is not so absurd to require the notices to be posted not over 100 feet apart, or to be headed with letters at least one inch long, as it is to undertake to be superior to the law and have the whole assessment imperiled. For the proceedings are now to acquire jurisdiction for ordering the work. If that is not done which is unmistakably required to be done, no jurisdiction is acquired, and all subsequent proceedings go for nothing. These notices must always be *signed* by the Street Superintendent and posted and published by himself or on his order, and subsequent notices by the Clerk of the Council, or by his certified order. There must be no avoidable delay in posting any notice.

intention, shall file with the Clerk a petition of remonstrance, wherein they shall state in what respect they feel aggrieved, or the proceedings to which they object; such petition or remonstrance shall be passed upon by the said City Council, and its decision therein shall be final and conclusive. But when the work or improvement proposed to be done is the construction of sewers, manholes, culverts, or cesspools, crosswalks or sidewalks, and curbs, and the objection thereto is signed by the owners of a majority of the frontage liable to be assessed for the expense of said work, as aforesaid, the said City Council shall, at its next meeting, fix a time for hearing said objections, not less than one week thereafter. The City Clerk shall thereupon notify the persons making such objections, by depositing a notice thereof in the Post Office of said city, postage prepaid, addressed to each objector, or his agent, when he appears for such objector. At the time specified said City Council shall hear the objections urged, and pass upon the same, and its decisions shall be final and conclusive, and the said bar for six months to any further proceedings shall not be applicable thereto. And when not more than two blocks, including street crossings, remain ungraded to the official grade, or otherwise unimproved, in whole or in part, and a block or more on each side upon said street has been so graded or otherwise improved, or when not more than two blocks at the end of a street remain so ungraded or otherwise unimproved, said City Council may order any of the work mentioned in this Act to be done upon said intervening, ungraded, or unimproved part of said street, or at the end of a street, and said work upon said intervening part, or at the end of a street, shall not be stayed or prevented by any written or other objection, unless such Council shall deem proper. And if one half or more in width or in length, or as to grading, one half or more of the grading work of any street, lying and being between two successive main street crossings,or if a crossing has been already partially graded or improved, as aforesaid, said Council may order the remainder improved, graded, or otherwise, notwithstanding, such objections of property owners. At the expiration of twenty days after the expiration of the time of said publication by said Street

6. Only the owners of the frontage upon the main street have this power of effectual objection. Strictly speaking, there can be no frontage upon crossings. The amounts assessed for crossing-work are so much smaller than for work opposite frontage, that it would be highly unjust to frontage owners that they should have no more power to bar work than those who pay the small sums for crossing-work. The next sentence, however, plainly includes the latter class in those who may file a remonstrance upon which the Council may act decisively, but which will not, of itself, bar the work.

When the Council acquires jurisdiction.

Superintendent and at the expiration of twenty-five days after the advertising and posting, as aforesaid, of any resolution of intention, if no written objection to the work therein described has been delivered, as aforesaid, by the owners of a major frontage of the property fronting on said proposed work or improvement, or if any written objection purporting to be signed by the owners of a major frontage is disallowed by said Council, as not of itself barring said work for six months, because, in its judgment, said objection has not been legally signed by the owners of a majority of said frontage, the City Council shall be deemed to have acquired jurisdiction[7] to order any of the work to be done, or improvement to be made, which is authorized by this Act; [8]which order, when made, shall be published for two days, the same as provided for the publication of the resolution of intention. Before passing any resolution for the construction of said improvements, plans and specifications and careful estimates of the costs and expenses thereof shall be furnished to said City Council, if required by it, by the City Engineer of said city; and for the work of constructing sewers, specifications shall always be furnished by him. [9]Whenever the contemplated work of improvement, in the opinion of the City Council, is of more than local or ordinary public benefit, or whenever, according to estimate to be furnished by the City Engineer, the total estimated costs and expenses thereof would exceed one half the total assessed value of the lots and lands assessed, if assessed upon the lots or land fronting upon said proposed work or improvement, according to the valuation fixed by the last assessment roll whereon it was assessed for taxes for municipal purposes, and allowing a reasonable depth from such frontage for lots or lands assessed in bulk, the City Council may make the expense of such work or improvement chargeable upon a district, which the said City Council shall in its resolution of intention declare to be the district benefited by said work or improvement, and to be assessed to pay the costs and expenses thereof. Objections to the extent of the district of lands to be affected or benefited by said work or improvement, and to be assessed to pay the costs and expenses thereof, may be made by interested parties, in writing, within ten days after the expiration of the time of the publication of the notice of

Order of work or resolution for construction.

Plans and specifications.

Declaring Districts for assessments by benefits.

7. The amendments of 1891 leave the time for filing barring objections the same as before, but delay for ten days further the time when the Council can acquire jurisdiction to order the work.

8. The Order of Work (Resolution for Construction) must, under this amended provision, be published in its entirety for two days, like the Resolution of Intention. A form for it will be found in Note 2 of Sec. 5.

the passage of the resolution of intention. The City Clerk shall lay said objections before the City Council, which shall, at its next meeting, fix a time for hearing said objections, not less than one week thereafter. The City Clerk shall thereupon notify the persons making such objections by depositing a notice thereof in the Post Office of said city, postage prepaid, addressed to each objector. At the time specified the City Council shall hear the objections urged, and pass upon the same, and its decision shall be final and conclusive. If the objections are sustained, all proceedings shall be stopped; but proceedings may be immediately again commenced by giving the notice of intention to do the said work or make said improvements. If the objections are overruled by the City Council, the proceedings shall continue the same as if such objections had not been made.

Petition of the major frontage, and its effect.

SECTION 4. [1]The owners of a majority in frontage of lots and lands fronting on any street, avenue, lane, alley, place, or court, or of lots or lands liable to be assessed for the expense of the work petitioned to be done, or their duly authorized agents, may petition the City Council to order any of the work mentioned in this Act to be done, and the City Council may order the work mentioned in said petition to be done, after notice of its intention so to do has been posted and published as provided in section three of this Act.

Notices inviting sealed proposals.

SECTION 5. Before the awarding of any contract by the City Council for doing any work authorized by this Act, the

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9. The remainder of this Section is an important and valuable amendment to the original Act. Casting upon the City Treasury the excess of the street assessment upon any one lot over half of its assessed valuation upon the last municipal tax-roll, as provided in that Act, had the effect to impede improvements by making the City Councils everywhere hesitate to order them. But now, the rights of the owners of lots of small value are fully conserved, and the extra expense of their improvement is cast where it should be, by erecting an assessment district within which all realty shall be assessed according to benefits. The Council may also include several streets of different widths and expenses for improving, into one district. Property-owners' objections cannot bar such work. It is in the discretion of the Council.

SEC. 4. 1 The proceedings described in Sec. 3 apply to instances where the petition for the work was signed by owners of less than a majority of the frontage, or where the Council acted of its own motion, as it may do, without any petition. In either of such cases, the written objection or protest of a majority of the frontage is sufficient to bar the work. This is because a majority had not previously appeared upon the petition. The law aims to collect once, and only once, in either way, the wishes of property owners as to the proposed work. Whenever a majority appears either way, there is no need to collect further the votes of the owners. Therefore, Sec. 3 provided for effectual objections when there was no sufficient petition, and Sec. 4 now provides for such a petition without providing for any objections to be filed. If such are filed, they have no authority and cannot bar the work, nor is the Council required to notice them. Cases frequently arise where owners, who have signed either petition or protest, change their minds and desire to cancel such signatures. Of course they can do this before the paper is filed, but not after that fact. Filing the paper makes it a public record, tee efficiency of which depends upon its condition at the moment of filing. The record cannot be changed, even by consent of the Council.

SEC. 5. 1 The decisions of the Supreme Court rigidly require that in the resolution ordering the work the Council shall explicitly direct their Clerk to post the notice, and that he shall actually do it. This Act implies that in prescribing that the Council

City Council shall cause notice, with specifications, to be posted[1] conspicuously for five days on or near the Council chamber door of said Council, [2]inviting sealed proposals or bids for doing the work ordered, and shall also cause notice[3] of said work inviting said proposals, and referring to the specifications[4] posted or on file, to be published for two days in a daily, semi-weekly, or weekly, newspaper published and circulated in said city, designated by the Council for that purpose, and in case there is no newspaper published in said city, then it shall only be posted as hereinbefore provided. All proposals or bids offered shall be accompanied by a check payable to the order of the Mayor of the city, certified by a responsible bank,

Sealed proposals.

Certified check or bond with bid.

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shall cause the posting. It is for five full days. Fractions of days cannot be counted. Therefore the Supreme Court has held assessments invalid where the first day's posting commenced after the opening of office hours, and there were not five days without it. So too, the five days' posting must not include the day when the bids are opened. The notice for sealed proposals must also, under these decisions, be *kept posted* for five full days. Other postings by the Clerk are under the same rule.

2 In Sec. 3 the full text of the Order of Work (Resolution for Construction) is directed to be published two days, and here, its notice, inviting sealed proposals, to be pubilshed for two days and posted five days. The following is suggested as the form for the

RESOLUTION ORDERING THE WORK.

RESOLVED, That the public interest and convenience require the work herein described, and the ..... of the..... of..... hereby orders the following street work to be done according to the specifications therefor adopted, or herein mentioned, or as contained in its ..... Number ..... to wit:
That..... Street in said..... from the ..... line of.....
Street to the ..... line of..... Street (except such portion thereof as is required by law to be kept in order or repair by any person or company having railroad tracks thereon) be (*here describe the work in the language of the Resolution of Intention, without adding any other work for which jurisdiction has not been acquired thereby. But such amplification of mere detail as is mentioned after the form of the Resolution of Intention in Note 1 of Section 3, is permissible, always provided, however that it merely locates or describes more exactly the kinds of work previously specified.*)

The Clerk of this is hereby directed to publish this Resolution for two days and notice of said work, inviting sealed proposals or bids for doing the work and referring to the specifications posted or on file, also for two days, both in the..... a daily (*semi-weekly or weekly*) newspaper published and circulated in this city, hereby designated for that purpose. Said notice shall require a certified check or a bond, either, as prescribed by law, and for an amount not less than ten per cent. of the aggregate of the proposal. He is also directed to post said notice with specifications conspicuously for five days on or near the Council chamber door.

(Original Resolution with Ayes and Noes certified by President and Clerk.)
(Published Resolution only signed officially by the Clerk.)
Adopted by said Council ..... 189.....

Clerk of the Council.

3. It will be observed that publishing the clumsy "Notice of Posting" has been abandoned and the simpler form of notice of the work has been restored to practice. The following form is suggested for the published and posted

NOTICE INVITING STREET WORK PROPOSALS.

Pursuant to Statute and to Resolution, Number..... adopted.....189 ..... by the..... of the ..... of ..... directing this notice, the 'undersigned invites and will receive at his office in the City Hall up to.....o'clock—M of the.....day of..... A. D. 189 , sealed proposals or bids for the following street work to be done according to the specifications posted and on file, therefor adopted, or herein mentioned, or as contained in its .....Number .. , to wit: That ..... treet in said..... from the..... line of.... Street to the..... line of..... Street, (except such portion thereof as is required by law to be kept in order or repair by any person or company having railroad tracks thereon) be, (*here describe the work exactly and fully in the language of the description contained in the Resolution Ordering the Work.*)

for an amount which shall not be less than ten per cent. of the aggregate of the [5]proposal, or [6]by a bond for the said amount and so payable, signed by the bidder and by two sureties, who shall justify, before any officer competent to administer an oath, in double the said amount, and over and above all statutory exemptions[7]. Said proposals or bids shall be delivered to

Justification of sureties.

Bidders must file with each proposal or bid a check payable to the order of the Mayor (*or President of the Board of Trustees*) of this city certified by a responsible bank, for an amount which shall not be less than ten per cent. of the aggregate of the proposal, or by a bond for the said amount and so payable, signed by the bidder and by two sureties, who shall justify, before any officer competent to administer an oath, in double the said amount, and over and above all statutory exemptions.

Clerk's Office, ...of..... . 189

(Name).....

Clerk of the.....

4. Specifications are general or special, or both. The first are the "general rules" mentioned near the end of Sec. 6, and should be made for each class of work—paving, macadamizing, sewering, etc. The second apply only to the particular piece of work in question. They are mentioned near the end of Sec. 3, and *must* be furnished for sewers, but, as to any other work, are optional. Specifications adopted before the Resolution of Intention enter into it as a component part for its tentative office in testing the vote of property owners. But they may be made after acquiring and before exercising jurisdiction.

5. The following form is recommended for

CONTRACTOR'S PROPOSAL WITH BOND.

City of.....189 .

To the Honorable the.....of the.....of.....:

In compliance with the annexed advertisement,.... hereby propose and agree to perform the work, mentioned upon ..... Street, from the line of..... Street to the .....line of.....Street, and furnish materials in accordance with the specfications and execute the contract therefor, to the satisfaction and under the supervision of the Street Superintendent of said.....at the following prices, viz :

[Here fasten securely the Notice to Contractors.] (*Here fill in the price opposite each kinds of work specified. Do not abbreviate. It has been found less troublesome to write, for instance, "cubic yard" than to answer objection to "c. y." when a pretext is desired to reject the bid.*) [Signed]..,..... ....

Contractor.

BOND.

KNOW ALL MEN BY THESE PRESENTS: That we (*if the bidder is a corporation*, a corporation having its office and principal place of business in said city of. .. ..), as principal, and .....and..... .....as sureties, are held and firmly bound unto the Mayor (*or* President of the Board of Trustees) of the City of .... aforesaid, in the just and full sum of..... ..... dollars, for the payment whereof we hereby bind ourselves, our (*if a corporation*, successors,) heirs, executors and administrators, jointly and severally, firmly by these presents.

Given under our hands and sealed with our seals, on this .....day of.....A. D., one thousand eight hundred and ninety ..... (*if by a corporation*—said company subscribing and setting its corporate seal hereto by..... ....., its..... thereto authorized.)

Now the condition of the foregoing obligation is such that, whereas the above bounden .... is about to hand in and submit to the..... of the.... . of ....the foregoing bid or proposal, for the performance of the work therein mentioned, which includes the furnishing of all materials in compliance with the specifications therefor, under an invitation of said..... .....contained in the notice or advertisement attached to said bid or proposal: Now, if the bid or proposal of the said..... .... shall be accepted, and the said work awarded to..... .. thereupon by said..... ....., and if the said. .... shall fail or neglect to enter into a contract therefor, and to execute an adequate bond to the satisfaction of the Mayor and Superintendent of Streets of said City, with two or more good and sufficient sureties, conditioned for the faithful performance of such contract on.....part, in such case required by Statute, then in that case the above named obligors will pay to the Mayor of said City of ....the full sum of ....dollars as liquidated damages for such failure and neglect.

WITNESS: (Signed and sealed by the contractor and two sureties.)

... .[SEAL.]

. .....[SEAL.]

.. ..[SEAL.]

Opening proposals.

the Clerk of the said City Council, and said Council shall, in open session, examine and publicly declare the same; *provided, however*, that no proposal or bid shall be considered unless accompanied by said check or bond satisfactory to the Council.

What bids may, and what bids must be rejected.

The City Council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent and unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may[8] award the contract for said work

Award of contract.

or improvement to the lowest responsible bidder at the prices named in his bid, which award shall be approved by the Mayor, or a three-fourths[9] vote of the City Council. If not approved

Approval of award.

by him, or a three-fourths vote of the City Council, without further proceedings, the City Council may readvertise for proposals or bids for the performance of the work as in the first instance, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the respective checks and bonds corresponding to the bid so rejected. But the checks accompanying such accepted proposals or bids shall be held by the City Clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into, either by said lowest bidder or by the owners of three-fourths part of the frontage, whereupon said certified check shall be returned to said bidder. But if said bidder fails, neglects, or refuses to enter into the contract to perform said

Disposal of certified checks.

work or improvement, as hereinafter provided, then the certified check accompanying his bid and the amount therein mentioned, shall be declared to be forfeited to said city, and shall be collected by it, and paid into its fund for repairs of streets;

STATE OF CALIFORNIA,
COUNTY OF..... } ss
CITY OF..... }

.....and..... ....., being severally duly sworn, each for himself and not one for the other, says that he is one of the sureties named in the foregoing bond, and that he executed the same, and is worth double the sum mentioned therein over and above all statutory exemptions.

Subscribed and sworn to this .....day of .....189, before me..... | (Signed by each surety without seal.) | .....

6. Under the text, as here amended, *the bidder now has the statutory right and alternative* of furnishing with his bid *either* a certified check or a bond in the manner prescribed. Formerly, he could furnish a bond only under express permission of the Council. If this were omitted it often worked a hardship on bidders, especially in large proposals, to have the amount of a certified check locked up for weeks until the contract could be signed. Of course it worked peculiar hardship on bidders with small means. But the bidder cannot now be stripped of this alternative right by any action, or want of action by the Council. Such action, whether under a city charter or ordinance, or resolution, is wholly *inoperative* whenever it attempts to provide for anything fully provided for by general law.

7. Some cities require oppressive and enormous qualifications for sureties. For work under it, the General Street Act sweeps all such away, and requires only as is above mentioned in the text, and for the reason mentioned in the preceding note.

and any bond forfeited may be prosecuted, and the amount due thereon collected and paid into said fund. Notice of such awards of contract shall be posted[10] for five days, in the same manner as hereinbefore provided for the posting of proposals for said work, and shall be published for two days in a daily newspaper published and circulated in said city, and designated by said City Council, or in cities where there is no daily newspaper, by one insertion in a semi-weekly or weekly newspaper so published, circulated, and designated; *provided, however*, that in case there is no newspaper printed or published in any such city, then such notice of award shall only be kept posted as hereinbefore provided. The owners[11] of three fourths of the frontage of lots and lands upon the street whereon said work is to be done, or their agents, and who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids, but may, within ten days after the first posting and publication of said notice of said award,[12] elect to take said work and enter into a written contract to do

Forfeited check or bond.

Posting notice of award.

Publishing same.

Property owner's election to take the contract from the awardee.

---

8. The following form is recommended:

RESOLUTION OF AWARD.

RESOLVED, That the ..... of the .....of ..... having in open session, on the..... day of.....A. D. 189..opened, examined, and publicly declared all sealed proposals or bids offered for the following work, to wit: That ..... Street, in this ....., from the ..... line of ..... Street to the .....line of.....Street be (*here describe the proposed work as in the Order of Work and mention R. R. exceptions if any*); hereby rejects all of said bids except that next herein mentioned, and hereby awards the contract for said work to the lowest regular responsible bidder to wit: to ..... at the prices specified in.....proposal on file for said work.

The Clerk of this .....is hereby directed to post notice of this Award conspicuously, for five days, on or near the Chamber door of this..... and also publish said notice in the....., a daily newspaper, published and circulated in this city, therefor and hereby designated, for two days, (*Or, in case of a weekly or semi-weekly newspaper, add;* "by one insertion in said... weekly newspaper.")

(Signed by President and Clerk of said.....Council.)

AYES AND NOES.

Approved..... ..189.., by..... .....Mayor

9. The three-fourths vote of the City Council is not on the passage of the Resolution of Award, but on its *approval*, *i. e.*, should it fail of approval by the Mayor, and return to the Council for final action.

10. The following form is recommended for both posting and publishing the

NOTICE OF AWARD OF CONTRACT.

Pursuant to Statute and to Resolution (Number....), of the.....of the..... of ....., adopted ....., 189.., directing this notice, notice is hereby given that the said.....in open session, on the.....day of.....189.., opened, examined, and publicly declared all sealed proposals offered for the following work to wit: That..... Street (*here copy fully from the Resolution all boundaries and details of the proposed work*); and thereafter on the..... day of..... .189.., awarded the contract for said work to the lowest regular responsible bidder, to wit:....., at the prices named for said work in his proposal on file, and that the said award has been approved by the.....

Clerk's office.....of....., ...A. D. 189..

....., Clerk of the.....

Of the.....of.....

Posting the notice of Award and *keeping it posted* are under the strict requirements commenced upon in Note 1 of this Section.

the whole work at the price at which the same has been awarded. Should the said owners fail to elect to take said work, and to enter into a written contract therefor within ten days, or to commence the work within fifteen days after the first posting and publication of said award, and to prosecute the same with diligence to completion, it shall be the duty of the Superintendent of Streets to enter into a contract with the original bidder to whom the contract was awarded, and at the prices specified in his bid. But if such original bidder neglects, fails, [13]or refuses, for fifteen days after the first posting and publication of the notice of award, to enter into the contract, then the City Council, without further proceedings, shall again advertise for proposals or bids as in the first instance, and award the contract for said work to the then lowest regular bidder. The bids of all persons and the election of all owners as aforesaid, who have failed to enter into the contract as herein provided, shall be rejected in any bidding or election subsequent to the first for the same work. If the owner or contractor who may have taken any contract, do not complete the same within the time limited in the contract, or within such further time as the City Council may give them, the Superintendent of Streets shall report such delinquency to the City Council, which may relet the unfinished portion of said work, after pursuing the formalities prescribed hereinbefore for the letting of the whole in the first instance. All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the Superintendent of Streets of said city, with two or more sureties and payable to such city,

Readvertising and reawarding.

Bond with the contract.

11. Under this amendment, the property-owners' contract may be now taken only by three fourths of the frontage upon the street of the main work.

12. This power "to elect to take said work and enter into a written contract" therefor, is a personal privilege. The contract and bond must be executed by the property owners as such. But they may, of course, elect and execute through an agent or an attorney in fact under their special power duly made and acknowledged. Sec. 16 defines, "who are owners."

13. If the original bidder presents himself to the Street Superintendent within the prescribed time and offers to enter into the contract, but that official does not prepare the contract until after the fifteen days mentioned, the original bidder can lose no right, provided he is always ready thereafter to subscribe the official contract subsequently prepared. For the "making of all written contracts" is given by Section 6 to that official, and even if the bidder prepares and tenders a contract in due form otherwise, it is not complete until the Superintendent has fixed therein the time for commencing and completing the work, and has subscribed it. So with the bond. That is merely to secure the contract, and has no vitality until the contract has been executed. But it follows the other so immediately that "contractors shall *at the time* of executing any contract, execute a bond," etc. In either instrument the contractor is not required to do what is beyond his power. *He* cannot "make the contract," but must enter into it when made for him. *He* cannot fix the amount of the bond, but must execute the bond to the satisfaction and approval of the Street Superintendent as soon as the Mayor, after timely inquiry, has fixed the amount. When the original bidder has done all he could do in time, but the contract is not perfected by the Street Superintendent, the bidder has not "neglected, failed or refused to enter the contract," nor until a contract is perfected, is its bond required.

in such sums as the Mayor shall deem adequate, conditioned for the faithful performance of the contract; and the sureties shall justify before any person competent to administer an oath, in double the amount mentioned in said bond, over and above all statutory exemptions. Before being entitled to a contract, the bidder to whom the award was made, or the owners who have elected to take the contract, must advance to the Superintendent of Streets, for payment by him, the cost of publication of the notices, resolutions, orders, or other incidental expenses and matters required under the proceedings prescribed in this Act, and such other notices as may be deemed requisite by the City Council. And in case the work is abandoned by the city before the letting of the contract, the incidental expenses incurred previous to such abandonment shall be paid out of the City Treasury.

Cost of publishing notice.

SECTION 6. The Superintendent of Streets is hereby authorized, in his official capacity, to make all written [1]contracts, and receive all [2]bonds authorized by this Act, and to do any other act, either express or implied, that pertains to the Street Department under this Act, and he shall fix the time for the commencement, which shall be not more than fifteen

Power of Street Supt.

Time for commencement of work.

SEC. 6. 1 The following form is recommended for the

CONTRACT.

This agreement is made and entered into this.....day of..... A. D. 189 .....by and between.....of the city of....., County of....., State of California, part .....of the first part, and ..as Street Superintendent of the City of...State of California, by the authority granted to him by an Act of the Legislature of California, entitled "An act to provide for work upon streets, lanes, alleys, courts, places and sidewalks, and for the construction of sewers within municipalities," approved March 18, 1885, and all Acts amendatory thereof, party of the second part.

Whereas, the said part.....of the first part (as by reference to the proceedings of the.....of the city of ..... on the .....day of .....A. D. 189. ...) ha been awarded the contract for the work hereinafter mentioned:

Now therefore, these presents witness, that the said part .....of the first part, for the consideration hereinafter mentioned, promises and agrees with said..... as Street Superintendent of the city of .....and not otherwise, that .....will do and perform, or cause to be done and performed, in a good and workmanlike manner, under the direction and to the satisfaction of the said Street Superintendent, and furnish the materials required for the execution and completion thereof in compliance with the specifications to the satisfaction of said Street Superintendent, all the following work, to-wit:

Fasten securely here a copy of the Notice to Contractors.	Copy exactly from the award the description and details of the work.

In said city of ....., according to the specifications on file for said work and those contained in..... Number .....

And the said.....acting in his official capacity as such Superintendent of Streets, and not individually, hereby fixes the time for the commencement of said work to be within.....days from the date hereof, and for its completion to be within ....days thereafter, and promises and agrees that on the performance of the covenants aforesaid by the said part....of the first part he will duly make and issue an assessment and diagram and attach a warrant thereto, as provided for in the aforementioned Act, for the expenses of the work aforesaid, at the following prices, to wit:

.....
.....
.....

Time for completion of work

days from the date of the contract, and for the completion of the work under all contracts entered into by him, which work shall be prosecuted with diligence from day to day thereafter to completion, and he may [3]extend the time so fixed from time to time, under the direction of the City Council. The work provided for in section two of this Act must, in all cases, be done under the direction and to the satisfaction of the Superintendent of Streets, and the materials used shall comply with the specifications and be to the satisfaction of said Superintendent of Streets, and all contracts made therefor must contain a provision to that effect, and also express notice that, in no case, except where it is otherwise provided in this Act, will the city, or any officer thereof, be liable for any portion of the

Ex'tensions.

What must be expressed in the contract.

And it is agreed and expressly understood by the parties to this agreement, that in no case (except where it is otherwise provided in said Act) will the said city of.... or any officer thereof, be liable for any portion of the expense of the work aforesaid, nor for any delinquency of persons or property assessed.

And it is agreed and expressly understood by the parties to the agreement, that under it eight hours of labor shall constitute a day's work, and that the said part .. of the first part shall not require more than eight hours' labor in a day from any person employed by ....herein.

(*Insert here a clause for the use of broad tires on wheels if such is required by any existing ordinance of the city.*)

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first herein written, at said city of.....

Signed, sealed and delivered in the presence of

.....

.....]SEAL.]

.....[SEAL.]

SUPERINTENDENT OF STREETS OF CITY OF.....

FORM OF EXTENSION.

Under the direction of the..... of the city of .....by its resolution Number .. , adopted.. ... .. 189 ..., and by virtue of the authority vested by statute in me as Street Superintendent of said city, I hereby extend by ... days the time fixed by me in the foregoing contract for.....the work therein specified.

Street Superintendent's office, city of ....., this .....day of 189

.....

SUPERINTENDENT OF STREETS OF CITY OF.....

2 The following form is recommended for the

BOND FOR STREET WORK.

Know all men by these presents, That we. .. ..(....*if by a corporation*,— a corporation formed and acting under the laws of the State of California, having its office and principal place of business in the City of .....)as principal, and ... . and ....as sureties, residents of the County of . ..... State of California, are jointly and severally bound unto the City of .. .. State of California, in the sum of..... ..dollars, gold coin of the United States of America, to be paid to the City of..... ....for which payment well and truly to be made, we bind ourselves, our (heirs *if a corporation insert*, successors), executors, administrators, or assigns, jointly and severally, by these presents. Sealed with our seals and dated this..... day of.....189...., and executed at said City of .....

The condition of this obligation is such, that if the above bounden ... . or assigns shall in all things stand to and abide by, and well and truly keep, and faithfully perform, the covenants, conditions and agreements, in a contract made between ....as contractor, and .. .. as Street Superintendent of the City of....., of even date herewith, for furnishing materials in compliance with the specifications and performing the following work, to-wit:

expense, nor for any delinquency of persons or property assessed. The City Council, may, by ordinance, prescribe general

General rules for work.

(Describe the work as in contract.)

on... part, to be kept and performed in the manner and form therein specified, then the above obligation to become void, else to remain in full force and virtue.

SEALED AND DELIVERED IN PRESENCE OF { .....[SEAL.[; .....[SEAL.] ; .....[SEAL.] ; .....[SEAL.]

STATE OF CALIFORNIA, COUNTY OF.... } SS: CITY OF.. }

.....

sureties in the within understanding, being duly sworn, say, each for himself, and not one for the other, that he is worth double the sum mentioned therein, to wit: is worth the sum of ....dollars, over and above all statutory exemptions.

Subscribed and sworn to before me this..... day of .....A. D. 189.

.....

.....

NOTARIAL SEAL NOTARY PUBLIC.

[Endorsed]

Approved for the sum of ..... dollars, the .....day of... .....189..

Mayor of the City of ....

Approved, this.... .day of .....189..

Superintendent of Streets of City of.....

3. Notice that the Council directs and the Superintendent makes the extension of time. Contractors who do not procure such extension *before* the contract-time has run out will find such neglect to be more expensive than any ordinary loss on a bad contract. See form of extension endorsed on the contract at close of Note 1, Sec. 6.

4 The following form is recommended:

ASSESSMENT, NUMBER ....

Pursuant to Statute, I..... ....., as Street Superintendent of the city of..... in the County of ..... ' and State of California, do hereby assess and apportion, as shown hereinafter and in the diagram attached hereto, upon certain lots, portions of lots and parcels of land fronting on ..... in said city from the line of ..... to the ..... line of..... and on streets intersecting it between said lines, the sum of ....($.....—/100) to be paid to. ....his agents, or assigns, to cover the sum due (including incidental expenses) for the work of. ....said.... .. .. .between said lines, as said work is more particularly specified in my official contract therefor with said ..... , dated the..... day of. .. .. .. A. D. 189 .. All of said work has been performed and materials furnished complying with the specifications, and under my direction to my satisfaction and acceptance. And because the names of the owners of said assessed property are unknown to me, I herein write the word "Unknown" opposite the number of the lot and the amount assessed thereon and the number of each lot, portion of a lot, or parcel of land assessed.

Total cost of the work is $ ....., as follows:

Grading....cubic yards of cutting at....cents	.....$.....
Grading....cubic yards of filling at.....cents.....	..$.....
Macadamizing .....square feet of roadway at . cents	.....$.....
Paving.....square feet of roadway at .....cents	.....$.....
Curbing .. ...linear feet at .....cents.....	.....$ ...
Culverts . linear feet at .... cents.....	.....$.....
Crosswalks .....linear feet at..... cents	.....$.....
Sewering.....linear feet at . ...cents.....	.....$.....
Branches of sewer pipe at ... ..each..	....$ .....
Manholes at ....each.	.....$.....
Lamp or flushing holes at.... ..each.....	.....$.....
Sets manhole fittings at.....each	.....$.....
Contract cost.....	.....$.....

rules directing the Superintendent of Streets and the contractor as to the materials to be used, and the mode of executing the work, under all contracts thereafter made. The assessment and apportionment of the expenses of all such work or improvement shall be made by the Superintendent of Streets in the mode herein provided.[4]

Assessment and apportionment.

INCIDENTAL EXPENSES.

City Engineer's Compensation .. .. $ .....
Publishing Notices and Resolutions.. .... $ .....
(Piling, Capping, Paving, or Sewer) Superintendent's compensation, ...
days . ... $ ..

Total cost ....$.....

DIVIDED AS FOLLOWS:

DESCRIPTION.	Grading in Cubic Yards. Cutting.	Grading in Cubic Yards. Filling.	Macadamizing, in Square Feet.		Grading Cost. $	Grading Cost. Cents.			Incidental expenses. $	Incidental expenses. Cents.	Total assessment. $	Total assessment. Cents.	Number of front feet assessed. Frontage.	Number of front feet assessed. Terminations.	Number of front feet assessed on. Opposite terminations.	Number of front feet assessed on. Crossings.	Rate per foot assessed. $
Frontage, exclusive of Terminations				(Column for the other kinds of work above specified.)			(Column for the cost of other kinds of work.)										
Termination of .. .. Street																	
Opposite Termination of .... .Street																	
Crossing of .. .. Street																	
Totals.....																	

ASSESSED AND APPORTIONED AS FOLLOWS, UPON

OWNERS.	Assessment Number.	Block	Lot	Front Feet on General Frontage.	Front Feet on Terminations	Front Feet on Opposite Terminations	Front Feet on Crossings.	Frontage Assessment. $	Frontage Assessment. Cents.	Termination Assessment. $	Termination Assessment. Cents.	Opposite Termination Assessment. $	Opposite Termination Assessment. Cents.	Crossing Assessment. $	Crossing Assessment. Cents.	Total Assessment. $	Total Assessment. Cents.	Payment
Unknown.																		
Unknown.																		
Unknown.																		

SEC. 7. *Subdivision One*—The expenses incurred for any work authorized by this Act [1](which expense shall not include the cost of any work done in such portion of any street as is required by law to be kept in order or repair by any person or company having railroad tracks thereon, nor include work which shall have been declared in the Resolution of Intention to be assessed on a district benefited) shall be assessed upon the lots and lands fronting thereon, except as hereinafter specifically provided; each lot or portion of a lot being separately assessed, [2]in proportion to the frontage at a rate per front foot sufficient to cover the total expense of the work.

Inhibited work under this Act.

How cost of work must be assessed.

Subdivision Two—The expenses of all improvements, except such as are done by contractors under the provisions of section thirteen of this Act, until the streets, avenues, street crossings, lanes, alleys, places, or courts are finally accepted, as provided in section twenty of this Act, shall be assessed upon the lots and lands as provided in this section according to the nature and character of the work; and after such acceptance the expense of all the work thereafter done thereon shall be paid by said city out of the Street Department Fund.

Expense before acceptance of street.

After acceptance.

Subdivision Three—The expense of the work done on main street crossings shall be assessed at a uniform rate per front foot of the [3]quarter blocks and irregular blocks adjoining and

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At said City of.. .....this .... day of..... ... A. D. 189.....

Recorded ....A. D. 189 . .

(Name]..... .. ..
Superintendent of Streets of
City of..... ....

(Name)..... ....

Superintendent of Streets of
City of. . ...

NOTE.—Where the assessment includes work on Crossings or Opposite Terminations, there should be inserted anywhere, *preceding the final signature of St. Superintendent*, a note describing each Assessment District assessed for such work, indicating by assessment and diagram Nos., in red ink, where it begins and where it ends.

SEC. 7. 1 This exception should be stated, *using only the language of the Act*, in the Council's resolution of intention, order and award, whenever the proposed work is upon a street "having railroad tracks thereon." For a district, the resolution of intention needs its own form. So, for work under Part IV (Street Improvement Bonds).

2 This provision requires absolute uniformity in the rate per front foot throughout all the proposed work (except at terminations, as in Subd. 4 and 7), and forbids the practice hitherto prevalent in many small municipalities, of assessing each lot for the cost of opposite work on its half of the street.

Assessment for work on main street crossings.

cornering upon the crossings, and [4]separately upon the whole of each lot or portion of a lot having any frontage in the said blocks fronting on said main streets, half way to the next main street crossing, and all the way on said blocks to a

"Dead ends."

boundary line of the city where no such crossing intervenes,[5] but only according to its frontage in said quarter blocks and irregular blocks.

On terminations and opposite terminations.

Subdivision Four—[6]Where a main street terminates in another main street, the expenses of the work done on one half of the width of the street opposite the termination shall be assessed upon the lots in each of the two quarter blocks adjoining and cornering on the same, according to the frontage of such lots on said main streets, and the expenses of the other half of the width of said street upon the lot or lots fronting on the latter half of the street at such termination.

On crossings of main and subdivisional streets or alleys.

Subdivision Five--Where any alley or subdivision street crosses a main street, the expense of all work done on said crossing shall be assessed on all lots or portions of lots half way on said alley or subdivision street to the next crossing or in-

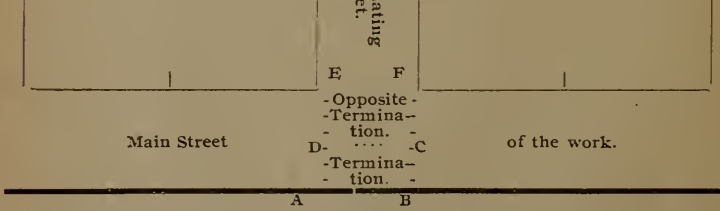
Cul-de-sac.

3 See amended definition of "irregular quarter blocks," in Subd. 12 of Sec. 34.

4 The "crossing assessment district of quarter blocks" is to be defined for the purpose solely of *measuring* the assessment at an equal rate per foot of frontage in those quarter blocks. "The *whole* of each lot or portion of a lot having any frontage in the quarter blocks fronting on said main (intersecting) streeets is to be assessed, but only *according to* its frontage" in them. The line of the imaginary quarter blocks will thus often fall short of the entire frontage of a lot in the middle of the block. But the whole lot is to be assessed and described on the diagram. The assessment also shows accordiug to what fraction of its frontage the assessment is made. "Portion of a lot" does not mean the arbitrary division of a lot by the Street Superintendent for this or any other purpose. No one has any power to make an actual division of a lot on an official map except the owner, who usually does it when it sells part of the lot. This Act contemplates no "portions of a lot," except those made by the owner,

5 "Dead Ends" of work (*i. e.*, not ending at a crossing,) are now explicitly provided for.

6 Subd. 4, as recently amended, is illustrated by this diagram:



A B is the line of termination and has frontage on the main street of the work. Whatever work is done in the parallelogram C D E F, must be assessed on the two cornering quarter blocks of the street that terminates in the other at A B. Whatever work is done on the parallelogram A B C D must be assessed on the lots of which A B form part or all of the frontage.

tersection, or to the end of such alley or subdivision street if it does not meet another.

On subdivisional street crossings.

Subdivision Six—The expense of work done on alley or subdivision street crossings shall be assessed upon the lots fronting upon such alley or subdivision streets on each side thereof, in all directions, half way to the next street, place, or court, on either side, respectively, or to the end of such alley or subdivision street, if it does not meet another.

Terminations, etc. of alleys, or subdivisional streets.

Subdivision Seven—Where a subdivision street, avenue, lane, alley, place, or court, terminates in another street, avenue, lane, alley, place, or court, the expense of the work done on one half the width of the subdivision street, avenue, alley, place, or court opposite the termination, shall be assessed upon the lot or lots fronting on such subdivision street, or avenue, lane, alley, place, or court so terminating, according to its frontage thereon, half way on each side, respectively, to the next street, avenue, lane, alley, court, or place, or to the end of such street, avenue, lane, alley, place, or court, if it does not meet another, and the other one half of the width upon the lots fronting such termination.

Assessm't for work on one side of center lines, for one block or less.

Subdivision Eight—Where any work mentioned in this Act (manholes, cesspools, culverts, crosswalks, piling and capping excepted) is done on either or both sides of the center line of any street for one block or less, and further work opposite to the work of the same class already done is ordered to be done to complete the unimproved portion of said street, the assessment to cover the total expenses of said work so ordered shall be made upon the lots or portions of the lots only fronting the portions of the work so ordered.[7] And when sewering or resewering is ordered to be done under the sidewalk or only on one side of a street for any length thereof,[8] the assessment for its expenses shall be made only upon the lots and lands fronting nearest upon that side, and for intervening intersections only upon the two quarter blocks adjoining and cornering upon that side.

Sewers under one sidewalk.

Property exempt from other taxation is subject to assessment under this Act.

Subdivision Nine—Section one of chapter three hundred and twenty-five of the laws of this State, entitled "An Act amendatory of and supplementary to 'An Act to provide revenue for the support of the government of this State,' approved

7. It follows obviously, that the cost of any of the excepted work, such as culverts, crosswalks or manholes, is always to be assessed upon the lots on both sides of the street. But notice that other work of completion is assessable on the nearest frontage lots, only when the contract is "for one block or less." Where it is for more than that, the general rule holds, and lots on both sides are assessed at the same rate per front foot.

8. But a sewer under one sidewalk is assessable hereafter only on the lot fronting nearest, and in contracts *for any length of street.*

April twenty ninth, eighteen hundred and fifty seven, approved April nineteenth, eighteen hundred and fifty nine, shall not be applicable to the provisions of this section; but the property herein mentioned shall be subject to the provisions of this Act, and be assessed for work done under the provisions of this section.

How lot owners may receive allowances for previous grading.

Subdivision Ten—[9]It shall be lawful for the owner or owners of lots or lands fronting upon any street, the width and grade of which have been established by the City Council, to perform at his or their own expense (after obtaining permission from the Council so to do, but before said Council has passed its resolution of intention to order grading inclusive of of this) any grading upon said street, to its full width, or to the center line thereof, and to its grade as then established, and thereupon to procure, at his or their own expense, a certificate from the City Engineer, setting forth the number of cubic yards of cutting and filling made by him or them in said grading, and the proportions performed by each owner, and that the same is done to the established width and grade of said street, or to the center line thereof, and thereafter to file said certificate with the Superintendent of Streets, which certificate the Superintendent shall record in a book kept for that purpose in his office, properly indexed. Whenever thereafter the City Council orders the grading of said street, or any portion thereof, on which any grading certified as aforesaid has been done, the bids and contract must express the price by the cubic yard for cutting and filling in grading; and the said owner or owners, and his or their successors in interest, shall be entitled to credit on the assessment upon his or their lots and lands fronting on said street for the grading thereof, to the amount of the cubic yards of cutting and filling set forth in his or their said certificate, at the prices named in the contract for said cutting and filling; or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade; *provided, however*, that such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and land owned by him or them, and proportionately assessed for the whole of said grading; and the Superintendent of Streets

9. The whole of Subd. 10 introduces much unavoidable complication in the assessment for the purpose of indemnifying any public-spirited owners who have done previous work on the street at their own expense. But they can get the benefit of this provision only by an exact and full compliance with *all* the conditions and public safeguards set out in the first sentence.

shall include in the assessment for the whole of said grading upon the same grade the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade so much of said certified work as would be required for grading thereto, and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and lands owned, respectively, by said certified owners and their successors in interest; *provided, however*, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street and belonging to any such certified owners or their successors in interest. Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done, or shall hereafter do any work (except grading) on such street, in front of any block, at his or their own expense, and the City Council shall subsequently order any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done, as provided in subdivision eleven of this section of this Act; *provided*, that the work so done at the expense of such owner or owners shall be upon the official grade, and in condition satisfactory to the Street Superintendent at the time said order is passed.

Allowance for previous work other than grading.

Subdivision Eleven—The City Council may include in one resolution of intention and order any of the different kinds of work mentioned in this Act, and it may [10]except therefrom any of said work already done upon the street to the official grade. The lots and portions of lots fronting upon said excepted work already done shall not be included in the frontage assessment for the class of work from which the exception is made; *provided*, that this shall not be construed so as to affect the special provisions as to grading continued in subdivision ten of this section.

All kinds of work may be included in one resolution of intention.

Subdivision Twelve—Whenever the resolution of intention declares that the costs and expenses of the work and improvement are to be assessed upon a district, the City Council shall direct the City Engineer to make a diagram of the property

Special Assessment by districts according to benefits

10. Where the location of the excepted work is also clearly defined, the lots fronting on it are not included, as to such work, in the general frontage. But if the exception is only of certain work without defining location (as where only the phrase is used, "where not already done"), the unexcepted lots abutting on the excepted work are included in the general frontage and are assessed at the same rate. Such saving in cost of new work by accepting the old, goes to the benefit of the general frontage. This subdivision necessarily implies sometimes special frontages at special rates per front foot.

affected or benefited by the proposed work or improvement, as described in the resolution of intention, and to be assessed to pay the expenses thereof. Such diagram shall show each separate lot, piece, or parcel of land, the area in square feet of each of such lots, pieces, or parcels of land, and the relative location of the same to the work proposed to be done, all within the limits of the assessment district; and when said diagram shall have been approved by the City Council, the Clerk shall, at the time of such approval, certify the fact and date thereof. Immediately thereafter the said diagram shall be delivered to the Superintendent of Streets of said city, who shall, after the contractor of any street work has fulfilled his contract to the satisfaction of said Superintendent of Streets, or City Council, on appeal, proceed to estimate upon the lands, lots, or portions of lots within said assessment district, as shown by said diagram, the benefits arising from such work, and to be received by each such lot, portion of such lot, piece or subdivision of land, and shall thereupon assess upon and against said lands in said assessment district the total amount of the costs and expenses of such proposed work, and in so doing shall assess said total sum upon the several pieces, parcels, lots, or portions of lots, and subdivisions of land in said district benefited thereby, to wit: Upon each, respectively, in proportion to the estimated benefits to be received by each of said several lots, portions of lots, or subdivisions of land. In other respects the assessment shall be as provided in the next section, and the provisions of subdivisions three, four, five, six, seven, and eight of this section shall not be applicable to the work or improvement provided for in this subdivision.

No measure of benefits remains applicable, except the street Superintendent's determination, subject to appeal.

Section 8. After the contractor of any street work has fulfilled his contract to the satisfaction of the Street Superintendent of said city, or City Council on appeal, the Street Superintendent shall make an assessment to cover the sum due for the work performed and specified in said contract (including any incidental expenses), in conformity with the provisions of the preceding section according to the character of the work done; or, if any direction and decision be given by said Council on appeal, then in conformity with such direction and

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SEC. 8. 1 See form of assessment in Note 4 of Sec. 6.

2 The real owner may not be the reputed owner, and the Street Superintendent cannot safely know who are the owners without searching the title of each lot,—an impracticable thing in long assessments. Therefore, the established custom for many years has *never* been to assess to any owner by name, but always to enter *merely* the word "unknown" under the head of "owners." Do not try to improve on the law by assessing to a name and adding "or unknown" or "and unknown." The Supreme Court has repeatedly upheld assessments to "unknown" only, declaring it to be the proper form.

decision, which [1]assessment shall briefly refer to the contract, the work contracted for and performed, and shall show the amount to be paid therefor, together with any incidental expenses, the rate per front foot assessed, if the assessment be made per front foot, the amount of each assessment, the name of the owner of each lot, or portion of a lot [2](if known to the Street Superintendent); if unknown, the word "unknown" shall be written opposite the number of the lot, and the amount assessed thereon, the number of each lot or portion or portions of a lot assessed, and shall have attached thereto a [3]diagram exhibiting each street or street crossing, lane, alley, place, or court on which any work has been done, and showing the relative location of each district, lot, or portion of lot to the work done, numbered to correspond with the numbers in the assessments, and showing the number of feet fronting, or number of lots assessed, for said work contracted for and performed.

Requisites of the assessment

Requisites of the diagram.

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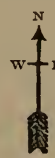
3 The following form is recommended for the printed part of the

DIAGRAM.

Exhibiting..... and its intersecting streets from the.... ...line of .....to the ....line of ..... in the City of ....., on which work has been done under my official contract as Street Superintendent of said city, with.. .. dated the..... day of.. .....A. D. 189 ..., for the..... ..... said ..... as is more particularly described in said contract; showing the relative location of each district, lot, portion of lot, or parcel of land to the work done; numbered in red ink to correspond with the red ink numbers in the assessment; and showing the number of feet fronting assessed for said work contracted for and performed. Herein "No." is used as the contraction of the word "number," and "ft." for the word "feet." The marks' and" mean respectively "feet" and "inches." Figures in black ink next to property lines show, each, the length of said line in feet. Other figures in black ink show the numbers of the lots.



(Here follows the linear part of the diagram.)

At said City of.....this.....day of... ....A. D. 189..

.....(Name.)

Superintendent of Streets of the City of..... .....

Recorded..... A. D. 189....

(Name.)

Superintendent of Streets of the City of.....

The importance of exactness in the diagram cannot be overrated. The Supreme Court frequently invalidates whole assessments from slight errors in this document. The assessment and diagram must describe the lots assessed with sufficient exactness to fix a lien. Each line of a lot should show its own length in figures. The arrow to fix the points of the compass, or words unmistakably indicating the same thing, it has been decided, are absolutely indispensable. Whole lots need not be broken up by lines to show where the boundaries of "crossing assessment district or quarter blocks" would cut them. Dotted lines are better, but in such cases the frontage of the lot must be marked by figures, part of it inside and part outside of the imaginary line of the quarter-block. Abbreviations must not be used unless the text expressly translates them, as is done here in the words above the arrow. Laymen usually are impatient in attempting to follow out every particular of this part of the Street Act, in applying it to *each lot*. Then, the contractor suffers in the courts.

The warrant.

Section 9. To said assessment shall be attached a warrant, which shall be signed by the Superintendent of Streets and countersigned by the Mayor of said city. The said warrant shall be substantially in the following form:

FORM OF WARRANT.

Form of warrant.

By virtue hereof, I (name of the Superintendent of Streets), of the City of———, County of———, (or City and County of———), and State of California, by virtue of the authority vested in me as Superintendent of Streets, do authorize and empower (name of contractor) (his or their) agents, or assigns to demand and receive the several assessments upon the assessment and diagram hereto attached, and this shall be (his or their) warrant for the same.

(Date)———. (Name of Superintendent of Streets,)

Countersigned by (name of Mayor.)

Recording, including Engineer's Certificate.

Said [1]warrant, assessment, and diagram, together with the [2]certificate of the City Engineer, shall be recorded in the office of said Superintendent of Streets. When so recorded the several amounts assessed shall be a [3]lien upon the lands, lots, or portions of lots assessed, respectively, for the period of two years from the date of said recording, unless sooner discharged; and from and after the date of said recording of any mortgage, assessment, diagram and certificate, all persons mentioned in section eleven of this Act shall be deemed to have notice of the contents of the record thereof. After said warrant, assessment, diagram, and certificate are recorded, the same shall be delivered to the contractor, or his agents or assigns, on demand, but not until after the payment to the said Superintendent of Streets of the incidental expenses not previously paid by the contractor, or his assigns; and by virtue of said warrant

Lien established by the recording.

Contractor's authority to collect.

SEC. 9, 1 The form of the warrant in the text should also contain these words at the foot:

Recorded .... 189 ..

.... (Name.)

Superintendent of Streets of City of ....

The Contractor's Return (Note 2, Sec. 10) should be printed on the back of the warrant. Sec. 10 says "Endorsed."

2 This amendment makes the certificate of the City Engineer for the first time a necessary part of the record. Its character is described in First Subdivision of Sec. 34. Hitherto, it needed only to be put on file by itself. Now, it must be *recorded*.

3 Hitherto the lien has been inchoate, commencing with the first acquisition and exercise of jurisdiction by the Council, and was operative only so far as to prevent owners from affecting the assessment by changing the area and boundaries of the land as it stood when jurisdiction was exercised. The Supreme Court has destroyed the subterfuge of a sale of a frontage an inch or two wide, for the purpose of having the assessment confined to this valueless strip. But now the lien is perfected by this recordation, unless, indeed, upon appeal to the Council (Sec. 11.) the assessment shall be amended or set aside, and a new one issued. In such a case, the lien is perfected according to and by the final recordation.

4. Suit, properly brought at any time within two years, preserves the lien up to the time of favorable judgment.

said contractor, or his agents or assigns, shall be authorized to demand and receive the amount of the several assessments made to cover the sum due for the work specified in such contracts and assessments. Whenever it shall appear by any final judgment of any Court in this State that any suit brought to foreclose the lien of any sum of money assessed to cover the expense of said street work done under the provisions of this Act has been defeated[5] by reason of any defect, error, informality, omission, irregularity, or illegality of any assessment hereafter to be made and issued, or in the recording thereof, or in the return thereof, made to or recorded by said Superintendent of Streets, any person interested therein may, at any time within three months after the entry of said final judgment, apply to said Superintendent of Streets who issued the same, or to any Superintendent of Streets in office at the time of said application, for another assessment to be issued in conformity to law; and said Superintendent shall, within fifteen days after the date of said application, make and deliver to said applicant a new assessment, diagram and warrant in accordance with law, and the acting Mayor shall countersign the same as now provided by law, which assessment shall be a lien for the period of two years from the date of said assessment, and be enforced as provided in section seven of this Act.

When a new assessm't may be issued after foreclosure suit has been defeated in the court.

Section 10. The contractor, or his assigns, or some person in his or their behalf, shall call upon the persons assessed, or their agents if they can conveniently be found, and demand payment of the amount assessed to each. If any payment be made the contractor, his assigns, or some person in his or their behalf, shall receipt the same upon the assessment in the presence of the person making such payment, and shall also give a separate receipt if demanded. Whenever the persons so as-

How contractor shall demand and acknowledge payments.

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5. This amendment is of the highest importance in giving relief to the contractor from correctible proceedings and from errors, etc., of the Street Superintendent's office. If defeated in the Superior Court for such cause, he may within three months thereafter procure a new and lawful assessment. But this merciful provision must be strictly construed, as are construed all proceedings *in invitum*, where the property owner is assessed under a contract which he does not make for himself. For instance, this relief mainly applies to errors in the assessment itself, or in its return, or in the recording of either. It is not applicable to jurisdictional errors in the Council proceedings or in the contract. Obviously it does not entitle any official to abate a jot of the care with which he should make out the assessment and its important adjuncts.

Section 10. 1. The mode of demand is highly important under the very stringent decisions of the Courts. It should be for the exact sums assessed, each, for frontage, or crossing, or termination, or opposite termination assessment, and then for the total sum due. The demand must *first* be made upon the tenant of any building on the ground. If the lot is naked, the demand must be made in a loud, perfectly audible voice from the unknown owners. It must be made "*on* the premises assessed." Standing on the sidewalk and throwing the voice over the lot, has been found to be an expensive process. Even where personal demands have been made, *always demand on the lot itself.*

sessed, or their agents, cannot conveniently be found, or whenever the owner of the lot is stated as "unknown" upon the assessment, then the said contractor, or his assigns, or some person in his or their behalf, shall publicly demand payment[1] on the premises assessed. The warrant shall be returned[2] to the Superintendent of Streets within thirty days after its date, with a return endorsed thereon, signed by the contractor or his assigns, or some person in his or their behalf, verified upon oath, stating the nature and character of the demand, and whether any of the assessments remain unpaid, in whole or in part, and the amount thereof. Thereupon the Superintendent of Streets shall record the return so made, in the margin of the record of the warrant and assessment, and also the original contract referred to therein, if it has not already been recorded, at full length in a book to be kept for that purpose in his office, and [3]shall sign the record. The said Superintendent of Streets is authorized at any time to receive the amount due upon any assessment list and warrant issued by

Demand upon the lot assessed

Return of warrant.

Record of return and contract.

Payment also to Street Superintendent.

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2. The following form is recommended for the

CONTRACTOR'S RETURN.

STATE OF CALIFORNIA, }
COUNTY OF ..... } ss
CITY OF ..... }

.....being duly sworn, says he is the ..... contractor named in annexed Assessment, Diagram and Warrant; that said assessment for the total cost of certain street work upon .... between .....streets in said city, as more fully described therein, and in the contract for said work with said ..... made by the Street Superintendent of said city, dated the .....day of..... A. D. 189 , levied as therein described upon certain lots, portions of lots, or parcels of land, and the unknown owners thereof for the sum of dollars ($ .....) payable to ..... agents or assigns, was made, and with the City Engineer's certificate of said work was recorded and delivered by said Street Superintendent on the. ... ..day of .....A. D. 189.., to affiant in behalf of said contractor, that there were attached to the same and delivered to the same in the same behalf at the same time by the said Street Superintendent, his diagram hereto attached, and a warrant in favor of ....for collecting said assessment, upon which warrant this return is endorsed; that in the case of all assessments therein described, but not included in the following table, affiant has, since the date last aforesaid, in the manner hereinafter described and in behalf of said contractor, made demand upon and received full payment from the owners of each and all such assessed lots and lands: and that besides all personal demands, affiant did, wherever the name of the owner of the lot is stated as "unknown" on the assessment, on the ..... day of ..... A. D. 189 , within thirty days from date of said warrant, and between the hours of 9 A. M. and 4 P. M., in behalf of said contractor, enter upon each of the corresponding lots, portions of lots and parcels of land assessed, and with said certificate, assessment, diagram and warraut, and in a loud, audible voice, publicly make separate demands for the payment of each of said assessments from the unknown owners thereof, upon each lot, portion of lot, or parcel of land, for each of its own assessments as specified in said assessment; and that wherever he found a building, tenant or occupant upon any of said premises, besides the public demand as aforesaid, he, at the same time, in the same behalf, presenting and exhibiting said certificate, assessment, diagram and warrant in each instance, demanded from each tenant, or occupant for the unknown owners separately the payment of each of said assessments upon said premises; and in the following table he states the name of such demandee, as "tenant," or "occupant" with the word "unknown;" but that, notwithstanding said demands, the following totals of said assessed sums, each separately demanded, and also the total, remain unpaid, to wit:

him, and give a good and sufficient discharge therefor; *provided*, that no such payment so made after suit has been commenced, without the consent of the plaintiff in the action, shall operate as a complete discharge of the lien until the costs in the action shall be refunded to the plaintiff; and he may release any assessment upon the books of his office, on the payment to him of the amount of the assesssment against any lot with interest, or on the production to him of the receipt of the party or his assigns to whom the assessment and warrant were issued; and if any contractor shall fail to return his warrant within the time and in the form provided in this section he shall thenceforth have no lien upon the property assessed; *provided, however*, that in case any warrant is lost, upon proof of such loss a duplicate can be issued, upon which a return may be made, with the same effect as if the original had been so returned. After the return of the assessment and warrant as aforesaid, all amounts remaining due thereon shall draw interest at the rate of ten per cent. per annum until paid.

Release of lien of assessment.

Contractor's loss of lien.

Interest on unpaid assessments.

Demands made upon as Owners.	Assessment and Diagram Numbers.	Dates of Demand 189 ..	Assessments Due and Unpaid. Dollars | Cents	Subsequent Payments.
Unknown	5	Day and month		
....Tenant—unknown	11	written out *opposite each number.*)		
Occupant—unknown	41			

.. ..(Affiant's name.)
Subscribed and sworn to, this.....day of ... . A. D. 189. before me
(*Notarial Seal.*) ....Notary Public.
Filed this ....day of ... . A. D. 189..
... ...

Appeal to the Council.

Section 11. The owners, whether named in the assessment or not, the contractor or his assigns, and all other persons directly interested in any work provided for in this Act, or in the assessment, feeling aggrieved by an act or determination of the Superintendent of Streets in relation thereto, or who claim that the work has not been performed according to the contract in a good and substantial manner, or having or making any objection to the correctness or legality of the assessment or other act, determination, or proceedings of the Superintendent of Streets, shall within thirty days after the date of the warrant, appeal to the City Council, as provided in this section, by briefly stating their objections in writing and filing the same with the clerk of said City Council. Notice of the time and place of the hearing, briefly referring to the work contracted to be done, or other subject of appeal, and to the acts, determinations or proceedings objected to or complained of, shall be published for five days. Upon such appeal, the said City Council may remedy and correct any error or informality in the proceedings, and revise and correct any of the acts or determinations of the Superintendent of Streets relative to said work, may confirm, amend, set aside, alter, modify or correct the assessment in such manner as to them shall seem just, and require the work to be completed according to the directions of the City Council; and may instruct and direct the Superintendent of Streets to correct the warrant assessment or diagram in any particular, or to make and issue a new warrant, assessment and diagram, to conform to the decisions of said City Council in relation thereto, at their option. All the decisions and determinations of said City Council upon notice and hearing as aforesaid, shall be final and conclusive upon all persons entitled to appeal under the provisions of this section, as to all errors, informalities, and irregularities which said City Council might have remedied and avoided; and no assessment shall be held invalid, except upon appeal to the City Council, as provided in this section, for any error, informality or other defect in any of the proceedings prior to the assessment, or in the assessment itself, where notice of the intention of the City Council to order the work to be done, for which the assessment is made has been actually published in any designated newspaper of said city for the

Publication of notice.

Powers of the Council upon the appeal.

Decision of the Council conclusive as to certain errors.

Council may hold an assessment to be invalid.

Effect of failing to appeal.

length of time prescribed by law, before the passage of the resolution ordering the work to be done.

SECTION 12. At any time after the period of thirty-five days from the day of the date of the warrants, as herein provided, or if an appeal is taken to the City Council, as provided in section eleven of this Act, at any time after five days from the decision of said Council, or after the return of the warrant or assessment, after the same may have been corrected, altered or modified, as provided is said section eleven (but not less than thirty-five days from the date of the warrant), the contractor or his assignee [1]may sue, in his own name, the owner of the land, lots, or portions of lots, assessed on the day of the date of the recording of the warrant, assessment and diagram. or any day thereafter during the continuance of the lien of said assessment, and recover the amount of any assessment remaining unpaid, with interest thereon at the rate of ten per cent. per annum until paid. And in all cases of recovery under the provisions of this Act, the plaintiff shall recover the sum of fifteen dollars, in addition to the taxable cost, as attorney's fees, but not any percentage upon said recovery. And when suit has been brought, after a personal demand has been made and a refusal to pay such assessment so demanded, the plaintiff shall also be entitled to have and recover said sum of fifteen dollars as attorney's fees, in addition to al[1] taxable costs, notwithstanding that the suit may be settled or a tender be made before a recovery in said action, and he may have judgment therefor. Suit may be brought in the [2]Superior Court within whose jurisdiction the city is in which said work has been done. and in case any of the assessments are made against lots, portions of lots, or

Contractor may sue.

What may be recovered by suit.

Suit in Superior Court.

2 Section 11, up to this point, substantially copies the Street Law Chapter of the Consolidation Act for San Francisco, which, in San Francisco cases, has received exhaustive illumination from Supreme Court decisions, establishing the broad rule, that appeal to the Council is the only remedy for faulty performance of the work, or for the correction of correctible errors in the proceedings. The remainder, commencing "and no assessment shall be held invalid," has received confirmation and considerable interpretation by various Superior Courts, but not to any full extent by the Supreme Court. But where the original statute had erected the Council into a *quasi* Court, with final power, among other powers, to *set aside* an assessment, this addition seems to enlarge greatly the scope of the statute. "No assessment shall be held invalid, except upon appeal to the City Council," etc. means, that the Council's determination of invalidity is final where a certain early step in acquiring jurisdiction had been properly taken. But where the contest is upon the imperfect execution, not the absolute omission, of certain proceedings which hitherto had gone to the jurisdiction, this addition seems to make them directory only. The addition intends, that the hearing of alleged subsequent errors, which hitherto had clogged the Courts by an immense addition to their business, should be transferred to the Council, as a Court, for determination.

SEC. 12. 1 The suit is brought against the owner to enforce the lien, and the judgment is against the owner and the land, but it is not a personal judgment so far as to entitle the judgment-creditor to a personal judgment against the owner for any deficiency there may be after applying the proceeds of the land sold in execution towards satisfying the judgment.

Service on absent owners.

lands the owners thereof cannot, with due diligence, be found, the service of each of such actions may be had in such manner as is prescribed in the Codes and laws of this State. The said warrant, assessment, certificate and diagram, with the affidavit of demand and non-payment, shall be held *prima facie* evidence of the regularity and correctness of the assessment and of the prior proceedings and acts of the Superintendent of Streets and City Council upon which said warrant, assessment and diagram are based, and like evidence of the right of the plaintiff to recover in the action. The Court in which said suit shall be commenced shall have power to adjudge and decree a lien against the premises assessed, and to order such premises to be sold on execution, as in other cases of the sale of real estate by the process of said Courts; and on appeal the appellate Courts shall be vested with the same power to adjudge and decree a lien and to order such premises to be sold on execution or decree as is conferred on the Court from which an appeal is taken. Such premises, if sold, may be redeemed as in other cases. In all suits now pending, or hereafter brought to recover street assessments, the proceedings therein shall be governed and regulated by the provisions of this Act, and, also, when not in conflict herewith, by the Codes of this State. This Act shall be liberally construed to effect the ends of justice.

Of what the warrant, etc., is prima facie evidence.

Lien decreed.

Proportional assessm'ts before completion of the work

Section 12½. The City Council instead of waiting until the completion of the improvement may in its discretion, and not otherwise, upon the completion of two blocks or more of any improvement, order the Street Superintendent to make an assessment for the proportionate amount of the contract completed, and thereupon proceedings and rights of collection of such proportionate amount shall be had as in sections eight, nine, ten, eleven and twelve of the Act of which this is amendatory is provided.

Section 13. When any portion of any street, avenue, lane, alley, court, or place in said city improved, or any sidewalk

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2 Suit cannot be brought in any Court lower than the Superior. The amount makes no difference, small or large. The suit is for enforcement of a lien upon land. This is a proceeding in equity. The Constitution limits such proceedings to the Superior Court. Certain old municipal charters, as for instance, that of Oakland, contained provisions for bringing such suits for small sums in the lower Courts. It was so grossly unconstitutional, that no lawyer ever dared to bring such suits.

Section 12½. Each proportional assessment must contain sufficient statement to enable it to stand alone and prove itself alone, if contested. Its frontage rate being the general frontage rate over the whole field under contract, and not what would be the frontage rate that would be made if the proportional part of the work were measured by itself, it is necessary for each proportional assessment to state first the aggregate and rates for the whole work, then its proportion at the same general rates on frontage, and then the peculiar cost of its own intersections.

constructed thereon shall be out of repair, or needing reconstruction, and in condition to endanger persons or property passing thereon, or in condition to interfere with the public convenience in the use thereof, it shall be the duty of said Superintendent of Streets to require, by notice in writing, to be delivered to them or their agents personally, or left on the premises, the owners or occupants of lots or portions of lots fronting on said portion of said street, avenue, alley, lane, court or place, or of said portion of said sidewalk so out of repair or needing reconstruction as aforesaid, to repair or reconstruct, or to do both, forthwith, said portion of said street, avenue, lane, alley, court or place, to the center line of said street in front of the property of which he is the owner or tenant, or occupant, and said Superintendent of Streets shall particularly specify in said notice what work is required to be done, and how the same is to be done, and what material shall be used in said repairs, or reconstructions, or both. If said repairs or reconstructions, or both, be not commenced within three days after notice given as aforesaid, and diligently and without interruption prosecuted to completion, the said Superintendent of Streets may, under authority from said City Council, make such repairs, reconstruction, or both, or enter into a contract with any suitable person, at the expense of the owner, tenant, or occupant, after the specifications for the doing of said work shall have been conspicuously posted by him in his office for two days, inviting bids for the doing of said work, which bids shall be delivered to him at his office on or before the second day of said posting, and opened by him on the next day following the expiration of said two days of posting, and the contract by him be awarded to the lowest bidder, if such lowest bid, in the judgment of said Street Superintendent, shall be reasonable. All of said bids shall be preserved in his office and open at all times after the letting of the contract to the inspection of all persons, and such owner, tenant, or occupant, shall be liable to pay said contract price. Such work shall be commenced within twenty-four hours after the contract shall have been signed, and completed without delay to the satisfaction of said Street Superintendent. Upon the completion of said repairs, or reconstruction, or both, by said contractors as aforesaid to the satisfaction of said Superintendent of Streets, said Superintendent of Streets shall make and deliver to said contractor a certificate to the effect that said repairs or reconstruction, or both, have been properly made by said contractor to the grade, and that the charges for the same are reasonable

Street Superintendent's authority to compel lot owners to repair, etc., the streets.

and just, and that he, said Superintendent, has accepted the same.

How contractor may collect for cost of such repairs.

Section 14. If the expenses of the work and material for such improvements, after the completion thereof, and the delivery to said contractor of said certificate, be not paid to the contractor so employed, or his agent or assignee, on demand, the said contractor, or his assignee, shall have the right to sue such owner, tenant, or occupant for the amount contracted to be paid; and said certificate of the Superintendent of Streets shall be *prima facie* evidence of the amount claimed for said work and materials, and of the right of the contractor to recover for the same in such action. Said certificate shall be recorded by the said Superintendent of Streets in a book kept by him in his office for that purpose, properly indexed, and the sum contracted to be paid shall be a lien, the same as provided in section nine of this Act, and may be enforced in the same manner.

Record of certificate as to such repairs.

Further remedy by fines and penalties.

Section 15. In addition, and as cumulative to the remedies above given, the City Council shall have power, by resolution, or ordinance, to prescribe the penalties that shall be incurred by any owner or person liable, or neglecting, or refusing to make repairs when required, as provided in section thirteen of this Act, which fines and penalties shall be recovered for the use of the city by prosecution in the name of the people of the State of California, in the Court having jurisdiction thereof, and may be applied, if deemed expedient by the said Council, in the payment of the expenses of any such repairs not otherwise provided for.

"Owner" defined.

Section 16. The person owning the fee, or the person in whom, on the day the action is commenced, appears the legal title to the lots and lands, by deeds duly recorded in the County Recorder's office of each county, or the person in possession of lands, lots, or portions of lots or buildings under claim, or exercising acts of ownership over the same for himself, or as the executor, administrator, or guardian of the owner, shall be regarded, treated and deemed to be the "owner" (for the purpose of this law), according to the intent and meaning of that word as used in this Act. And in case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

How tenant may pay for landlord.

Section 17. Any tenant or lessee of the lands or lots liable may pay the amount assessed against the property of which he is the tenant or lessee under the provisions of this Act, or

he may pay the price agreed on to be paid under the provision of section thirteen of this Act, either before or after suit brought, together with costs, to the contractor, or his assigns, or he may redeem the property, if sold on execution or decree for the benefit of the owner, within the time prescribed by law, and deduct the amount so paid from the rents due and to become due from him, and for any sums so paid beyond the rents due from him, he shall have a lien upon and may retain possession of the said land and lots until the amount so paid and advanced be satisfied, with legal interest, from accruing rents, or by payment by the owner.

Records of Street Superintendent.

Section 18. The records kept by the Superintendent of Streets of said city, in conformity with the provisions of this Act, and signed by him, shall have the same force and effect as other public records, and copies therefrom, duly certified, may be used in evidence with the same effect as the originals. The said records shall, during all office hours, be open to the inspection of any citizen wishing to examine them, free of charge.

Service of notice and its verification.

Section 19. Notices in writing which are required to be given by the Superintendent of Streets under the provisions of this Act, may be served by any person with the permission of the Superintendent of Streets, and the fact of such service shall be verified by the oath of the person making it, taken before the Superintendent of Streets, who for that purpose and all other purposes and in all cases where a verification is required under the provisions of this Act is hereby authorized to administer oaths, or other person authorized to administer oaths, or such notices may be delivered to the Superintendent of Streets himself, who must also verify the service thereof, and who shall keep a record of the fact of giving such notices, when delivered by himself personally, and also of the notices and proof of service when delivered by any other person.

Prerequisites for acceptance of streets and their subsequent improvement at expense of the city.

Section 20. Whenever any street or portion of a street has been or shall hereafter be fully constructed to the satisfaction of the Superintendent of Streets and of the City Council, and

Section 20. 1 This is mandatory and casts a plain duty upon the City Council. But the prerequisite of the street's "being in good condition *throughout*," is under the discretionary judgment of the Council. It would seem to be its duty to adopt such regulations as will present a standard condition for the street to possess before it shall be entitled to acceptance by the Council, and thereafter be repaired or improved at municipal expense.

Notice, however, that Section 20 provides only for the Council's acceptance of a *street* or a portion of a street, which has been *fully* constructed by all or most of the different kinds of work described in Section 2. This acceptance should not be confounded, as it frequently is in general speech, with the acceptance of the *work* under a contract for one or more kinds of work. There may be several acceptances of contract work by Street Superintendent and by the Council upon appeal, before the street is "fully constructed" and Section 20 applies.

is in good condition throughout, and a sewer, gas pipes, and water pipes are laid therein, under such regulations as the City Council shall adopt, the same shall be accepted by the City Council, by ordinance, and thereafter shall be kept in repair and improved by the said municipality; the expense thereof together with the assessment for street work done in front of city property, to be paid out of a fund to be provided by said Council for that purpose; *provided*, that the City Council shall not accept of any portion of the street less than the entire width of the roadway (including the curbing), and one block in length, or one entire crossing; and *provided further*, that the City Council may partially or conditionally accept any street, or portion of a street, without a sewer, or gas pipes, or water pipes therein, if the ordinance of acceptance expressly states that the Council deems such sewer, or gas pipes, or water pipes to be then unnecessary, but the lots of land previously or at any time assessable for the cost of constructing a sewer, shall remain and be assessable for such cost, and for the cost of repairs and restoration of the street damaged in the said construction, whenever said Council shall deem a sewer to be necessary, and shall order it to be constructed, the same as if no partial or conditional acceptance had ever been made. The Superintendent of Streets shall keep in his office a register of all streets accepted by the City Council under this section, which register shall be indexed for easy reference thereto.

Limits of acceptance.

Partial or conditional acceptance.

Register of accepted streets.

Section 21. The Superintendent of Streets shall keep a public office in some convenient place within the municipality, and such records as may be required by the provisions of this Act. He shall superintend and direct the cleaning of all sewers, and the expense of the same shall be paid out of the Street or Sewer Fund of said city.

Office and duties of Street Superintend't.

Section 22. It shall be the duty of the Superintendent of Streets to see that the laws, ordinances, orders, and regulations relating to the public streets and highways be fully carried into execution, and that the penalties thereof are rigidly enforced. He shall keep himself informed of the condition of all of the public streets and highways, and also of all public buildings, parks, lots and grounds of said city, as may be prescribed by the City Council. He shall, before entering upon the duties of his office, give bonds to the municipality, with such sureties and for such sums as may be required by the City Council, and should he fail to see the laws, ordinances, orders, and regulations relative to the public streets or highways carried into execution, after notice from any citizen of a

His bond and liability.

violation thereof, he and his sureties shall be liable upon his official bond to any person injured in his person or property in consequence of said official neglect.

Private damages through defective streets.

Section 23. If, in consequence of any graded street or public highway improved under the provisions of this Act being out of repair and in condition to endanger persons or property passing thereon, any person carefully using said street or public highway, and exercising ordinary care to avoid the danger, suffer damage to his person or property through any such defect herein, no recourse for damages thus suffered shall be had against such city; but if such defect in the street or public highway shall have existed for the period of twenty-four hours or more after notice thereof to the said Superintendent of Streets, then the person or persons on whom the law may have imposed the obligations to repair such defect in the street or public highway, and also the officer or officer through whose official negligence such defect remains unrepaired, shall be jointly and severally liable to the party injured for the damages sustained: *provided*, that said Superintendent has the authority to make said repairs, under the direction of the City Council, at the expense of the city.

Extended powers of Council as to sewers, etc.

Section 24. The City Council of such city shall have full power and authority to construct sewers, gutters and manholes, and provide for the cleaning of the same, and culverts, or cesspools, or crosswalks, or sidewalks, or any portion of any sidewalk upon or in any street, avenue, lane, alley, court, or place in such city, of such materials, in such a manner, and upon such terms as it may deem proper. None of the work or improvements described in this section shall be stayed or prevented by any written or any other remonstrance or objection, unless such Council deems proper.

Repairing and watering streets, etc.

Section 25. The City Council may, in its discretion, repair and water streets that shall have been graded, curbed, and planked, paved or macadamized, and may build, repair and clean sewers, and shall provide a Street Contingent Fund at the same time and in the same manner as other funds are provided out of which to pay the costs and expenses of making said repairs, and watering said streets, and building, repairing and cleaning said sewers; but whenever any unaccepted street or part of a street requires regrading, recurbing, repiling, repaving, replanking, regraveling, or remacadamizing, or requires new culverts, or new crosswalks, or new sidewalks, or new sewers, the work shall be advertised and let out by contract, and the costs and expenses thereof shall be assessed upon

Improving unaccepted streets after work in the first instance.

the property affected or benefited thereby, the same as in the first instance.

Council may pay out of the city treasury for part of or all the work mentioned in this Act. Mode.

Section 26. The City Council may, in its discretion, order, by resolution, that the whole or any part of the cost and expenses of any of the work mentioned in this Act be paid out of the Treasury of the municipality from such fund as the Council may designate. Whenever a part of such cost and expenses is so ordered to be paid, the Superintendent of Streets, in making up the assessment heretofore provided for such cost and expenses shall first deduct from the whole cost and expenses such part thereof as has been so ordered to be paid out of the Municipal Treasury, and shall assess the remainder of said cost and expenses proportionately upon the lots, parts of lots, and lands fronting on the streets where said work was done, or liable to be assessed for such work, and in the manner heretofore provided.

PART II.

Enabling provisions for Council to construct and assess for sewers at its discretion

Section 27. [1]Whenever the City Council deem it necessary to construct a sewer, then the said Council may, in its discretion, determine to construct said sewer, and assess the cost and expenses thereof upon the property to be affected or benefited thereby, in such manner and within such assessment district as it shall prescribe, and the lien therefor upon said property shall be the same as is provided in section nine of this Act, or said Council may determine to construct said sewer and pay therefor out of the Street Contingent Fund.

Special election to authorize municipal indebtedness under these enabling provisions.

Section 28. If, at any time, the City Council shall deem it necessary to incur any indebtedness for the construction of sewers, in excess of the money in the Street Contingent Fund applicable to the construction of such sewers, they shall give notice of a special election by the qualified electors of the city, to be held to determine whether such indebtedness shall be incurred. Such notice shall specify the amount of indebtedness proposed to be incurred, the route and general character of the sewer or sewers to be constructed, and the amount of money

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Section 26. 1 This does not affect the manner and safeguards already provided for municipal payments by special charter, as, for instance, the One-Twelfth Act for San Francisco.

PART II.

Section 27. 1 This is a specially enabling section. Ordinary sewers at either private or municipal expense, or both, have already been fully provided for, and this, as a new provision, would seem to be intended to apply to main sewers only. If the expense of the sewer is determined by the Council to fall upon the property to be benefited thereby, jurisdiction therefor must first be obtained by the resolution of intention mentioned in Section 3. But the exercise of acquired jurisdiction may be had as the Council is enabled by Section 27. It may especially vary by creating a different assessment district, and by assessing otherwise than by the front foot.

necessary to be raised annually by taxation for an interest and sinking fund as hereinafter provided. Such notice shall be published for at least three weeks in some newspaper published in such city, and no other question or matter shall be submitted to the electors at such election. If, upon a canvass of the votes cast at such election, it appears that not less than two-thirds of all the qualified electors voting at such election shall have voted in favor of incurring such indebtedness, it shall be the duty of the City Council to pass an ordinance providing for the mode of creating such indebtedness and of paying the same; and in such ordinance provision shall be made for the levy and collection of an annual tax upon all the real and personal property, subject to taxation, within such city, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within a period of not more than twenty years from the time of contracting the same. It shall be the duty of the City Council in each year thereafter, at the time when other taxes are levied, to levy a tax sufficient for such purpose, in addition to the taxes authorized to be levied for city purposes. Such tax, when collected, shall be kept in the treasury as a separate fund, to be inviolably appropriated to the payment of the principal and interest of such indebtedness.

Bonds issued.

Section 29. If bonds are issued under the provisions of the last section, said bonds shall be in sums of not less than one hundred dollars nor more than one thousand dollars, shall be signed by the Mayor and Treasurer of the city, and the seal of the city shall be affixed thereto. Coupons for the interest shall be attached to each bond signed by the Mayor and Treasurer. Said bonds shall bear interest, to be fixed by the City Council, at the rate of not to exceed five per cent. per annum.

Sale of bonds.

Section 30. Before the sale of said bonds, the Council shall, at a regular meeting, by resolution, declare its intention to sell a specified amount of said bonds, and the day and hour of such sale, and shall cause such resolution to be entered in the minutes, and shall cause notice of such sale to be published for fifteen days in at least one newspaper published in the city in which the bonds are issued, and one published in the City and County of San Francisco, and in any other newspaper in the State at their discretion. The notice shall state that sealed proposals will be received by the Council for the purchase of the bonds on the day and hour named in the resolution. The Council, at the time appointed, shall open the proposals and

award the purchase of the bonds to the highest bidder, but may reject all bids.

Section 31. The Council may sell said bonds at not less than par value, without the notice provided for in the preceding section.

Proceeds of bonds.

Section 32. The proceeds of the sale of the bonds shall be deposited in the City Treasury to the account of the Sewer Fund, but no payment therefrom shall be made, except to pay for the construction of the sewer or sewers for the construction of which the bonds were issued, and upon the certificate of the Superintendent of Streets and the City Engineer, that the work has been done according to contract.

Special plans and specifications.

Section 33. Whenever said Council shall determine to construct any sewer, and pay therefor out of the Street Contingent Fund, or by the issuance of bonds, as above provided, then said Council shall cause to be prepared plans and specifications of said work in sections, and shall advertise for twenty days in at least one newspaper published in the city in which the sewer is to be constructed, and one in the City and County of San Francisco, for sealed proposals for constructing said sewer. The work may be let in sections, and must be awarded to the lowest responsible bidder, the Council having the right to reject any and all bids. The work shall be done and the materials furnished under the supervision and to the satisfaction of the Superintendent of Streets and the City Engineer.

PART III.

Duties and compensation of City Engineer.

Section 34. *First*—The City Engineer, or where there is no City Engineer, the County, or City and County Surveyor, shall be the proper officer to do the surveying and other engineering work necessary to be done under this Act, and to survey and measure the work to be done under contracts for grading and macadamizing streets, and to estimate the costs and expenses thereof; and every certificate signed by him in his official character shall be prima facie evidence in all Courts in this State of the truth of its contents. He shall also keep a record of all surveys made under the provisions of this Act, as in other cases. In all those cities where there is no City Engineer, the City Council thereof is hereby authorized and

SEC. 34. 1 Unless the office is salaried the City Engineer's fees should always be fixed by ordinance. They enter into the incidental expenses of street assessments, and might involve questions as to their proper amount which would be highly annoying to contractors by delaying collections until after an appeal to the Council on that ground. His "compensation" under this Act may be wholly by salary, or partly by salary, partly by official fees, and partly by audited bills for extra work, *i. e.* preparing special specifications, plans or estimates, "if required by the Council," under Sec. 3, or any other extra work.

empowered to appoint a suitable person to discharge the duties herein laid down as those of City Engineer, and all the provisions hereof applicable to the City Engineer shall apply to such person so appointed. Said City Council is hereby empowered to fix his compensation for such services.[1]

Definition of "work," "improve," etc.

Second—The words "work," "improve," "improved," and "improvement," as used in this Act, shall include all work mentioned in this Act, and also the construction, reconstruction, and repairs of all or any portion of said work.

What are "Incidental Expenses."

Third—The term "incidental expenses," as used in this Act, shall include the compensation of the City Engineer for work done by him; also, the cost of printing and advertising as provided in this Act, and not otherwise; also the compensation of the person appointed by the Superintendent of Streets to take charge of and superintend any of the work mentioned in section thirty-five of this Act. All demands for incidental expenses mentioned in this subdivision shall be presented to the Street Superintendent by itemized bill, duly verified by oath of the demandant.

Their verification.

Newspaper publication of notices, etc.

Fourth—The notices, resolutions, orders, or other matter, required to be published by the provisions of this Act, and of the Act of which this is amendatory, shall be published in a daily newspaper, in cities where such there is, and where there is no daily newspaper, in a semi-weekly or weekly newspaper, to be designated by the Council of such city, as often as the same is issued, and [2]no other statute shall govern or be applicable to the publications herein provided for; *provided, however*, that only in case there is no daily, semi-weekly, or weekly newspaper printed or circulated in any such city, then such notices, resolutions, orders, or other matters, as are herein required to be published in a newspaper, shall be posted and kept posted for the same length of time as required herein for the publication of the same in a daily, semi-weekly, or weekly newspaper, in three of the most public places in such city. Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher, or clerk of the newspaper, or of the poster of the notice. No publication or notice, other than that provided for in this Act, shall be necessary to give validity to any of the proceedings provided for therein.[2]

Posting in 3 places only when no newspaper is published in the city.

Proof of publication or posting.

Fifth—The word "municipality," and the word "city," as

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2 These amendments assert more distinctly the unquestioned principle, that the publications or notices provided in this, a general law, control all inconsistent provisions in special laws or city charters.

used in this Act, shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing, and those hereafter organized, for municipal purposes.

What is "municipality" and "City."

Sixth—The words "paved," or "repaved," as used in this Act, shall be held to mean and include pavement of stone, whether paving blocks or macadamizing, or of bituminous rock or asphalt, or of iron, wood, or other material, whether patented or not, which the City Council shall by ordinance adopt.

What is paving.

Seventh—The word "street," as used in this Act, shall be deemed to, and is hereby declared to, include avenues, highways, lanes, alleys, crossings, or intersections, courts, and places, and the term "main street," means such actually opened street or streets as bound a block; the word "blocks," whether regular or irregular, shall mean such blocks as are bounded by main streets, or partially by a boundary line of the city.[3]

"Street," "main street," and "blocks," defined.

"Dead ends."

Eighth—The terms "Street Superintendent," and "Superintendent of Streets," as used in this Act, shall be understood, and so construed as to include, and are hereby declared to include, any person or officer whose duty it is, under the law, to have the care or charge of the streets, or the improvement thereof, in any city. In all those cities where there is no Street Superintendent or Superintendent of Streets, the City Council thereof is hereby authorized and empowered to appoint a suitable person to discharge the duties herein laid down, as those of Street Superintendent, or Superintendent of Streets; and all provisions hereof applicable to the Street Superintendent, or Superintendent of Streets, shall apply to such person so appointed.

Who is "Street Superintendent."

Ninth—The term "City Council" is hereby declared to include any body or Board which, under the law, is the legislative department of the government of any city.

What is "City Council."

Tenth—In municipalities in which there is no Mayor, then the duties imposed upon said officer by the provisions of this Act shall be performed by the President of the Board of Trustees, or other chief executive officer of the municipality.

Who is "Mayor."

Eleventh—The term "Clerk" and "City Clerk," as used in this Act, is hereby declared to include any person or officer who shall be Clerk of the said City Council.

Who is "Clerk."

Twelfth—The term "quarter block," as used in this Act as to irregular blocks, shall be deemed to include all lots or por-

"Quarter blocks" in irregular blocks.

3. This disregards, for the purpose ot assessment, merely paper or map blocks shown to be bounded by streets expected to be open hereafter. The assessment must recognize only streets and blocks as they really are at the time.

tions of lots, having any frontage on either intersecting street half-way from such intersection to the next main street, or, when no main street intervenes, all the way to a boundary line of the city.

Thirteenth—The term "one year," as used in this Act, shall be deemed to include the time beginning with January first and ending with the thirty-first day of December of the same year.

Fourteenth—References in certain sections, by number, to certain other sections of "this Act" refer to the number of the sections of the original Act as heretofore amended, unless it appears from the context that the reference is to the section of this amendatory Act, when it shall be construed according to the context.

Special Superintendent of Sewers, Piling, Capping and Paving.

Section 35. [1]The Superintendent of Streets shall, when in his judgment it is necessary, appoint a suitable person to take charge of and superintend the construction and improvement of each and every sewer constructed or improved under the provisions of this Act, and of piling and capping, sidewalks, or of the paving of whatever character heretofore mentioned, in whole or in part, of one block or more, whose duty it shall be to see that the contract made for the doing of said work is strictly fulfilled in every respect, and in case of any departure therefrom to report the same to the Superintendent of Streets. Such person shall be allowed for his time actually employed in the discharge of his duties such compensation as shall be just, but not to exceed four dollars per day. The sum to which the party so employed shall be entitled shall be deemed to be incidental expenses, within the meaning of those words as defined by this Act.

Repeal of General Street Act of 1883.

Section. 36. The Act entitled "An Act to provide for the improvement of streets, lanes, alleys, courts, places and sidewalks, and the construction of sewers within municipalities," approved March sixth, eighteen hundred and eighty-three, is hereby repealed; *provided* that any work or proceedings commenced thereunder prior to the passage of this Act shall in nowise be affected hereby, but shall in all respects be finished and completed under said Act of March sixth, eighteen hundred and eighty-three, and said repeal shall in nowise affect said work or proceedings.

SEC. 35. 1 City Councils frequently undertake to appoint the Superintendents of Sewer Work etc. under municipal contracts. They have no such power. It lies solely in the Street Superintendent.

General repealing Clause

Section 37. This Act shall take effect and be in force from and after its passage, and all Acts and parts of Acts in conflict with this Act are hereby repealed; *and provided, however*, that any work or proceedings of the City Council commenced under the Act of which this amendatory shall in nowise be affected thereby, but shall in all respects be finished and completed thereunder, and [1]this Act shall in nowise affect said work or proceedings.

Previous proceedings not affected.

CHAPTER CXIV.

An Act to amend an Act entitled "An Act to provide for work upon streets, lanes, alleys, courts, places, and sidewalks, and for construction of sewers within municipalities," approved March 18, 1885, by adding thereto an additional part numbered four, consisting of sections thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three and forty-four, relative to a system of street improvement bonds.

[Approved March 17, 1891.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The above entitled Act is hereby amended by adding Part IV thereto, consisting of sections thirty-eight, thirty-nine, forty, forty-one, forty-two, forty-three, and forty-four.

SEC. 37. 1 "This Act," as the phrase is last used, means the Amendatory rather than the original Act.

GENERAL NOTE TO PART IV.

The system of Street Improvement Bonds is now imbedded in the General Act. It has long been obvious that the chief obstacle to the general improvement of streets has been the inability of many of the property owners to pay cash for work. Most of them desire the work but will not put themselves to the inconvenience of sparing or raising the money for its cost. This feeling frequently blockades for years an improvement which all the owners concerned really desire and which nearly half of them are willing to pay for at once, but the law allows these to be overslaughed by the written objections of the major frontage. The Bond System removes the reason of the chief objection by spreading the payments equally over a term not exceeding ten years. It has worked so successfully in many of the older States that it is no longer an experiment. It is a necessary step in the larger development of material interest now in progress throughout California.

Examination of the text of Part IV is necessary for the details, but the general principle is to satisfy the need of the property owner to have his work done now and be paid for at once or within ten years as he may prefer, and at the same time to provide the bond in marketable form. For no contractor can afford to carry by himself for ten years the bonds which represent the cost of doing the work, and he must engage a purchaser for them before he can dare to bid on the work at all. No purchaser being found, no bids can be made and no work can be done. The Bond Plan would become a dead letter. Besides the great relief to the property owners' convenience which is sought in the system, it is vitally necessary for the realization of that relief that the bonds should be drawn so as to be attractive to investors of money. This is as indispensable to the property owner as to the bond holder.

It will be observed that these are not municipal bonds, pledging the resources of the whole city, authorized by popular vote, and payable out of general taxation. Obviously, such would not be voted and issued, especially where many of the city

Part IV.

Section 38. Whenever the City Council shall find, upon estimates[1] of the City Engineer, that the cost of any proposed

Estimates by City Engineer.

streets had already been improved at private cost. These bonds are confined to single contracts for street work; are each for the assessment of $50 and upwards on a single lot; and are secured by that lot only. The work is done in the usual manner. When the assessment is issued the owner who prefers to pay or fight and does not wish his lot to be bonded, takes it from the issue by simply filing notice to that effect. There being nothing compulsory therefore in the issuance of the bond, the reason does not exist, which, when it exists, is the foundation of the frequent statutory requirement of a previous popular election. To the former scheme of street work and collections of its cost there is now added simply, an alternative as to the mode of that collection, which each owner can elect to take or to stand in the position he would be in if there were no Part IV. There is no existing law or reason for law, to require a previous popular vote where each owner can singly prevent an incumbrance upon his property.

Assessments of $50 and upward are listed by the Superintendent of Streets to the City Treasurer, who issues bonds to represent each of such assessments as are not paid or taken from the list by notice of the owner. Each bond is secured by the lot assessed; the bonds are declared to be not municipal, (the Constitution inhibits municipal bonds for such purpose) and are payable by the Treasurer in equal annual payments, with coupons for semi-annual interest, out of the fund supplied by the owners of the lots. Each bond stands by itself. If default in the payment occurs the bond becomes wholly due at option of the holder, and can be immediately collected.

Several features distinguish these from ordinary bonds and should make them desirable for investment.

(1) Each is a first lien upon the lot and is so created by operation of law.

(2) Upon default of any payment of principal or interest, the holder is not compelled to sue upon his bond, but can, if he chooses, have the lot sold as for municipal or State and County taxes, under similar notice, proceedings and right of redemption. These simple subsequent proceedings being properly taken, there is no imaginable way in which the sale can be enjoined on account of any original defences against the assessment. Section 40 provides that "the issuance of said bonds shall be *conclusive evidence* of the regularity of all previous proceedings and the validity of said lien." The lot-owner has consented to the bond and received indulgence of time thereby; he is no longer an unwilling person in whose case proceedings *in invitum* are strictly construed. The force of conclusive evidence appears from Section 1837 of the Code of Civil Procedure. "Sec. 1837. Conclusive or unanswerable evidence is that which the law does not permit to be contradicted."

(3) The margin of security is much greater than in ordinary mortgages where from one to two-thirds of the value is loaned, and is greater than any usual investment. This bond will range from two to seven dollars per front foot of a city lot, the usual value of which is, in suburban streets from five to fifteen times the cost of suburban work, and on business streets, from twenty to several hundred times the cost of the work appropriate for such street. To this must be added the established fact that street work instantly increases the previous value of a lot by much more than the cost of the work.

(4) The margin of security increases annually, as payments are made and the lien remains upon the entire lot. It also increases whenever in ten years an improvement is added to the property.

(5) The bond holder cannot be compelled to receive entire payment and surrender his bond within ten years. Should a lot owner desire to make earlier payment he can do this only with the consent of the bondholder.

(6) In the rare instances where the lot assessed is of such shape or location as to have less value than a proper margin of seccurity demands, the bondowner can omit that bond from his purchase, each bond in the series standing by itself.

In fixing the rate of interest, it becomes necessary for the City Council to consider the fact that if a lower rate is fixed than one at which the bond can be marketed at par value, the contractor cannot bid at all, unless at much higher prices than otherwise. Also, that investors in securities will not buy unless the rate of interest fixed by the Council exceeds the net rate satisfactory to them after they have paid the municipal, State and County taxes on the bonds. For these bonds are "secured values," and will be so taxed in the hands of the holders under sworn statements to the Assessor.

SECTION NOTES.

Section 38. 1. The Engineer's estimate is a jurisdictional requirement, and should be duly filed. The following form of the resolution of the Council directing it, is suggested:

Resolved, That the City Engineer is hereby directed to furnish to this Council estimates of the cost of (*here describe in general terms each kind of the proposed work*) ——Street, from the——line of——Street to the——line of——Street (except such portion thereof as is required by law to be kept in order or repair by any person or company having railroad tracks thereon) for the purpose of enabling this Council to determine whether bonds may be issued to represent the cost thereof.

work or improvement authorized by this Act will be greater than two dollars per front foot along each line of the street proposed to be improved, including the cost of intersection work assessable upon said frontage, it shall have the power, in its discretion, to determine that bonds shall be issued to represent the cost of said work or improvement in the manner and form hereinafter provided. Said bonds shall be of the nature known as serials, and shall extend over a period not to exceed ten years, an even annual proportion of the principal sum thereof being payable on the first day of January every year after their date, until the whole is paid, and the interest being payable semi-annually, on the first days of January and July, respectively, of each year, at the rate of not to exceed ten per cent per annum on all sums unpaid, until the whole of said principal and interest are paid. Said bonds and the interest thereon shall be paid at the office of the City Treasurer, who shall keep a fund designated by the name of said bonds, into which he shall receive all sums paid upon the principal of said bonds and the interest thereon, and from which he shall disburse all such sums upon the presentation of said bonds and coupons; and under no circumstances shall said bonds or the interest thereon be paid out of any other fund. Said City Treasurer shall cancel all interest coupons when he pays them, and shall note across the back of each bond any installment of principal that he shall pay thereon.

Minimum cost of work.

Bonds described.

Payable by City Treasurer from a fund.

Payment of coupons and upon principal

SECTION 39. When said City Council shall determine that bonds shall be issued to represent the expenses of any proposed work or improvement, it shall so declare in the resolution of intention[1] to do said work, and shall specify the rate of interest which they shall bear. The like description of said bonds shall be inserted in the resolution ordering the work,[2] in the resolution of award,[2] and in all notices of said proceedings required by this Act to be either posted or pub-

Description of bonds must be in certain specified proceedings.

Section 39. 1. These declarations and descriptions are absolutely required and cannot be omitted. The following words should be inserted in the form of the Resolution of Intention found in Note 1, of Section 3, and *between* the description of the work and the designation of a newspaper:

That this —— finds upon estimates directed to be furnished and furnished to it by the City Engineer, that the cost of the above proposed work will be greater than two dollars per front foot along each line of said — Street, between said lines including the cost of intersection work assessable upon said frontage; and thereupon determines that serial bonds bearing interest at the rate of —— per cent. per annum, and extending over the period of ten years from their date, shall be issued to represent the cost and expenses of said work and in the manner and form provided by law.

2. Each of these requirements is imperative and performance is essential. In each of the following forms:

Resolution ordering the work (Note 2 of Section 5).
Resolution of award (Note 8 of Section 5).
Notice of street work (Note 5 of Section 3).
Notice inviting street work proposals (Note 3 of Section 5.)
Notice of award of contract (Note 10 of Section 5).

lished;[2] and also a notice that a bond will issue to represent each assessment of fifty dollars or more remaining unpaid for thirty days after the date of the warrant, or five days after the decision of said Council upon an appeal, and describing the bonds, shall be included in the warrant provided for in section nine of this Act.[3]

Notice in the warrants.

Section 40. After the full expiration of thirty days from the date of the warrant, or if an appeal be taken by the City Council, as provided in section eleven, then five days after the final decision of said Council, and after the Street Superintendent shall have recorded the return, as provided in section ten, the said Street Superintendent shall make and certify to the City Treasurer a complete list of all assessments unpaid, which amount to fifty dollars or over upon any assessment and diagram number; and said Treasurer shall thereupon make out, sign and issue to the contractor, or his assigns, payee of the warrant and assessment, a separate bond, representing upon each lot or parcel of land upon said list the total amount of the assessments against the same, as thereon shown. And if said lot or parcel of land is described upon said assessment and diagram by its number or block, or both, and is also designated by its number or block, or both, upon any official map of said municipality, or upon any map on file in the office of the County Recorder of the county in which said municipality is situated, then it shall be in said bond a sufficient description of said lot or parcel of land to designate it by said number or block or both, as it appears on said official or recorded map. Said bond shall be substantially in the following form:

Listing unpaid assessments of $50 or over.

Issuance of a bond for each lot.

Description of lot.

STREET IMPROVEMENT BOND.

Series (designating it); in the city (or other form of the municipality) of (naming it).

$——$^{100}_{——}$ No. ——.

Next after the description of the work, add these words:

And that serial bonds, bearing interest at rate of —— cent per annum, and extending over a period of ten years from their date, shall be issued to represent the cost and expenses of said work and in the manner and form provided by law.

3. This notice and description *must* be included in the text of the "Form of the Warrant" in Section 9. It properly comes next before the signatures. These words are recommended:

Serial bonds, bearing interest at the rate of —— per cent. per annum and extending over a period of ten years from their date. are to be issued to represent the cost and expenses of the work described in the assessment, and in the manner and form prescribed by law; and notice is hereby given that a bond in such series will issue to represent each assessment of fifty dollars or more remaining unpaid for thirty days after the date of this warrant, or five days after the decision of the City Council of this city upon an appeal.

Section 40. 1. Insert here the full title of the Amending Act (Chapter CXIV) from the preceding text where Part IV begins.

Under and by virtue of an Act of the Legislature of the State of California, entitled[1] (title of the Act) and particularly under the sections therein numbered as —— consecutively to —— inclusive,[2] I, out of the fund for the above designated Street Improvement Bonds, series——, will pay to—— ——, or order, the sum of —— —— ($——), with interest at rate of——per centum per annum, all as is hereinafter specified, and at the office of the —— Treasurer of the —— of———— State of California. This bond is issued to represent the cost of certain street work upon ————, in the —— of ——— as the same is more fully described in Assessment Number ——, issued by the Street Superintendent of said —— —— after his acceptance of said work, and recorded in his office. Its amount is the amount assessed in said assessment against the lot or parcel of land numbered therein, and in the diagram attached thereto, as Number ——, and which now remains unpaid, but until paid, with accrued interest, is a first lien upon the property affected thereby, as the same is described herein, and in said recorded assessment with its diagram to wit: The lot or parcel of land in said —— of ——, County of———, State of California, ———— ——

Assessment for the bond is first lien on the lot.

Bond is payable from the fund of its series.

This bond is payable exclusively from said fund, and neither the municipality or any officer thereof is to be holden for payment of its principal or interest. The term of this bond is —— years from its date, and at the expiration of said time the whole sum then unpaid shall be due and payable, but on the first day of January of each year after its date an even annual proportion of its whole amount is due and payable until the whole is paid, with interest at the rate of—— per centum per annum. The interest is payable semi-annually, to wit: On the first day of January and of July in each year hereafter, upon presentation of the coupons therefor, the first of which is for the interest from date to the next first day of —— and thereafter the coupons are for semi-annual interest, except the last, which is for interest

Annual payments upon principal.

Coupons for semi-annual interest.

2. Fill in section numbers "thirty-eight consecutively to forty-two."

of the semi-annual payment next preceding and to the date of the final maturity of this bond. Should default be made in the annual payment upon the principal or in any payment of interest, the holder of this bond is entitled to declare the whole unpaid amount to be due and payable, and to have said lot or parcel of land advertised and sold forthwith, in the manner provided by law for sale of land assessed for State and County taxes delinquent in the payment thereof.

Upon default, lot may be sold as for taxes.

At said —— of ——, this —— day of ——, in the year one thousand ---- hundred and ——.

———

City Treasurer of the ——— of——

Assessments less than $50 not bonded but collected otherwise.

Provided, that in case the amount of unpaid assessments upon any parcel of land shall be less than fifty dollars, then the same shall be collected as hereinbefore provided in part one of this Act; *provided also*,[3] that if any person or his authorized agent shall at any time before the issuance of the bond present to said City Treasurer his affidavit, made before a competent officer, that he is the owner of a lot or parcel of land in said list, accompanied by the certificate of a Searcher of Records, that he is such owner of record, and with such affidavit said person notifies said Treasurer, in writing, that he desires no bond to be issued for the assessment upon said lot or parcel of land, then no such bond shall be issued therefor, and the payee of the warrant or his assigns, shall retain his right for enforcing collection, as if said lot or parcel of land had not been so listed by the Street Superintendent.

Lot owner upon notice may prevent issuance of bond for his assessment.

The bonds so issued by said Treasurer shall be payable to the party to whom they issue, or order, and shall be of the nature hereinbefore described, and shall bear interest at the rate specified in the resolution of intention to do said work.

Bonds payable to party or order.

They shall have semi-annual interest coupons thereto attached, the first of which shall be payable upon the first day of January or July, as the case may be, next after its date, and shall be for the interest accrued at that time, and the last of which shall be for the amount of interest accruing from the first day of January or July, as the case may be, next preceding the maturity of said bonds to the maturity thereof. The City Treasurer shall, in addition to his other duties in the premises, report all payments of principal upon said bonds to the Street Superintendent, who shall forthwith indorse the same

Interest coupons.

3. Under this provision, no owner of a lot assessed for $50 or more is subjected to the issuance of a bond for such assessment whether he wishes it or not. He can prevent such issuance either by paying the assessment or by filing his notice in the manner above provided.

First lien on the lot.

upon the margin of the record of the assessment, to the credit of which the same is paid, and said assessment shall be a first lien upon the property affected thereby, until the bond issued for the payment thereof and the accrued interest thereon shall be fully paid. The issuance of said bonds shall be conclusive evidence of the regularity of all previous proceedings and the validity of said lien.[4]

Conclusive evidence of validity of bonds.

Section 41. Whenever, through the default of the owner of any lot or parcel of land to represent the assessment upon which such bond has been issued, any payment, either upon the principal or of the interest, shall not be made when the same is due, and the holder of the bond thereupon demands, in writing, that the said City Treasurer proceed to advertise and sell said lot or parcel of land, as herein provided, then the whole bond, or its unpaid remainder, with its accrued interest, shall become due and payable immediately, and on the day following shall become delinquent; and the City Treasurer shall act thereafter with all the powers and duties of the Tax Collector in the collection of unpaid State and County taxes, and shall forthwith proceed to advertise and sell said lot or parcel of land by proceedings in all respects the same as provided by law for the collection of delinquent State and County taxes. All such provisions and proceeedings, after taxes have become delinquent, including the certificate of sale, the right of redemption, and the deed, with the respective costs thereof, are hereby made applicable to this case.

Upon any default in payment, Bond becomes due immediately if holder demands.

Lot to be sold as for taxes.

Section 42. The term "City Treasurer," as used in this Act shall be held to mean and include any person who, under whatever name or title, is the custodian of the funds of the municipality.

"City Treasurer" defined.

Section 43. [1]Whenever any railroad track or tracks of any description exists upon any street or streets on which the City Council has ordered work to be done or improvements made, excepting therefrom such portions as is required by law to be kept in order or repair by any person or company having railroad tracks thereon, the said Council may, at any time thereafter, order such person or company to perform upon said excepted portion the work or improvement similar in all respects to that already ordered to be performed under the same specifications and superintendence, with the same materials, within the same time, and to the like satisfaction and acceptance. Thereupon, it shall be the duty of the Clerk o

Council may separately order similar street work upon the excepted R. R. portion of streets, and at the cost of the R. R. Co.

4. "Conclusive evidence" is defined in C. C. P. 1837 as "that which the law does not permit to be contradicted." See comments on this subject in (2) of the General Note upon Part IV on Page 45.

said Council to deliver immediately a copy of such order, certified by him, to such person or company, and to make and preserve in his office a certificate of such delivery, its date, and upon whom made. Should such person or company for thirty days. or within such extension of time as the City Council may grant, thereafter refuse or neglect to make or have made such work or improvement in the manner or time ordered, it shall be the duty of the City Council to have such expected work or improvement performed, and such refusal or neglect punished in the manner provided by law. Within fifteen days after receiving the certified copy of said order, such person or company may file with the Clerk of said Council a written assumption of the performance of said work or improvement, according to the order, or a request to the Council to have such work or improvement performed for and at the expense of such person or company in the manner herein provided. The failure to file such instrument within said time shall be taken and deemed to be a refusal to comply with the order. Upon reception of said assumption of the direct performance of said work or improvement, the City Council shall take no further proceedings in the matter, unless such person or company neglects or fails for thirty days, or such further time as the Council may grant, to comply with the provisions of the order. But if such person or company files the said request that the said Council have such work or improvement performed, or fails to perform said work within said thirty days, or within such further time as the Council may grant, then said City Council may pass an ordinance of intention to perform said work, which ordinance shall specify the work to be performed, and a statement that unless within thirty days after the recording of the return of the warrant, or within five days after the final decision of the Council on an appeal, the said person or company shall pay the cost of said work, or file with the Street Superintendent of said city a notice that he or it does not desire to pay for the cost of said work by installments, that the Street Superintendent of said city will issue bonds to represent the cost of said work, stating also that the cost of said work shall be paid in ten yearly installments, and also the rate of interest (not to exceed ten per cent per annum) that the same will bear. A

Refusal or neglect.

Duty of Council in such cases.

R. R. Co. may do its own work or have it done.

Proceedings when R. R. Co. does not do its own work.

Bonds to be issued in certain cases.

Section 43. 1 This section supplements the Civil Code on this subject and provides methods for the exercise of inherent or reserved municipal powers. Work upon the R. R. portions of the roadway which cannot be done at cost of abutting lots, must be done by the R. R. Co., or at its cost, and must be "similar in all respects to the street work on either side."

similar statement shall also be incorporated in all notices required to be posted or published by the provisions of this Act; also, in the ordinance or resolution ordering the work, advertisement for proposals and in the contract. Whenever the person or company owning any such railroad shall not have, within thirty days after the recording of the return of the warrant, or within five days after the final decision of the Council on an appeal, paid the cost of such work, or filed with the Street Superintendent a notice that he or it does not desire to pay for said work in installments, the Street Superintendent shall issue to the contractor or his assigns bonds for the amount of such cost, which shall describe the franchise, tracks, roadbed. and switches along or between which such work has been performed, and describing the same as upon the assessment and diagram, giving its assessment number. Such bond shall also describe the work performed, giving the total amount of the cost of such work, the name of the owner of said railroad, the number of installments in which the cost of the work is to be paid, and the rate of interest which the deferred payments shall bear. Said bond shall be in sum not less than one hundred dollars or more than one thousand dollars each, and shall recite that the total amount of the cost of said work, together with the interest thereon, as represented in said bond, is, except State, county and municipal taxes, a first lien upon that portion of the tracks, roadbed, and switches of said railroad along or between which work has been performed, and also upon the franchise of said railroad along that portion of the streets, alleys, or places upon which such work has been performed. Said Street Superintendent shall also keep a record of such bond as required by section eighteen or the Act of which this is amendatory. Whenever bonds have been issued, as herein provided, the same, together with the cost of such work, together with interest thereon, shall be, except State, county or municipal taxes, a first lien upon that portion of the tracks, roadbed and switches of said railroad along or between which said work has been performed, and also upon the franchise of said company along that portion of the streets, alleys or places upon which said work has been performed. All provisions of section three[2] hereof, in regard to the foreclosure of the same, shall apply hereto. All provisions of section four[2] hereof shall also apply to the bonds contemplated by this section. None of the provisions of this Act or of the Act to which it is amendatory, in regard to a protest against the work, shall apply to any work contem-

When Bonds shall issue.

Description of the R. R. Bond.

Record.

First lien on R.R. plant and franchise except for taxes.

plated by this section. In case the person or company owning such railroad shall elect to do the work, and shall enter into a contract with the Street Superintendent, or, in case the owners of three-fourths of the frontage of lots and lands upon the streets whereon said work is to be done elect to take the contract, and enter into the same with the Street Superintendent, as provided in section five of the Act, of which this is amendatory, then all provisions herein in regard to payment by installments and issuing of bonds shall not apply. In case the person or company owning any railroad track or tracks to be assessed as contemplated in section one [2]hereof, shall file with the Street Superintendent, within the time therein specified, a notice that he or it does not desire to pay for said work by installments, then the same proceedings in regard to the collection of the cost of said work shall be had as is provided in the Act to which this is amendatory. All of the provisions in said Act not inconsistent with the provisions of this amendment shall apply hereto.

When bonds are not to be issued.

Section 43 was amended in passage and thereby occasionally amends the English language as the latter is usually written. The original Bill was for amending the Act by sections. As amended it simply adds Part IV with sections, as above. In the instances noted as 2 and 2, the original text of the bill remains, referring to its numbering of the sections which are now 40 and 41. But ambiguity is removed by the recital of the subjects of the section, "foreclosure of the lien," and "the bonds."

Section 44. This Act shall take effect and be in force from and after its passage.[1]

Section 44. 1. Part IV aims throughout to facilitate that improvement by consulting the pecuniary convenience of those who feel unable to pay cash and yet desire the work. They need not now ask their neighbors to delay needed improvements out of sympathy for themselves. It is believed that sections 38–42 will tend to beautify city streets without harsh inconvenience to any one.

Section 43 is independent of the General Bond System for property owners, but provides more effectively than heretofore, for symmetrical street finishing over the R. R. portion of the roadway, and it seeks to lighten the burden upon R. R. Cos. by giving them also the option of having the issuance of bonds, in most respects like those issued for the relief of property owners. The phrase "street easement," now has a meaning outside of legal phraseology.

CHAPTER CCXLIV.

An Act to amend an Act entitled, "An Act to provide for work upon streets, lanes, alleys, courts, places, and sidewalks, and for the construction of sewers within municipalities," approved March 18, 1885, *by adding thereto certain new and additional sections, to provide the mode of carrying into effect certain provisions of said Act relative to changing grades.*

[Approved March 31, 1891.]

The people of the State of California, represented in Senate and Assembly, do enact as follows:

Section 1. The Act entitled "An Act to provide for work upon streets, lanes, alleys, courts, places, and sidewalks, and for the construction of sewers within municipalities," approved March eighteenth, eighteen hundred and eighty-five, is hereby amended by adding thereto sections, as follows:

How City Council may change grade.

Section 38. The City Council are hereby empowered to change or modify the grade of any public street, lane, alley place, or court, in the manner as hereinafter provided. Before any change of grade is ordered, the City Council shall pass a resolution of intention to make such change or changes of grade, and shall publish a copy of said resolution in a newspaper in which the official notices of the City Council are usually printed and published, such newspaper to be designated in the resolution of intention. Said resolution shall be published in every regular issue of such newspaper for not less than ten days, and shall describe the proposed change of grade, and shall designate and establish the district to be affected thereby, and within the limits of said districts the lots of land to be benefited by such change of grade shall be assessed to pay any damage that may be awarded by reason of the change. One or more street or blocks of any street or streets may be embraced in the same proceedings. Within five days after the first publication of the resolution of intention, the Superintendent of Streets shall cause to be conspicuously posted, within the district designated in the resolution, notices of the passage of said resolution. Said notices shall be the same in all requirements of contents and posting as the "Notices of street work," provided for in section three of the Act hereby amended. If no objections to said proposed

Resolution of Intention.

Publication.

District affected.

Posting notices.

GENERAL NOTE.

The object of Chapter CCXLIV is to provide new methods for effectuating the power to change grades. If the proposed change is generally acceptable, the delay involved is slight. If a contest arises, this chapter aims to make such provision for determining the contest that the damages arising from the change of grade shall fall, not upon the city, but upon the benefited lots within the lines of the district affected by the change. In such case the proceedings will be prolonged to a considerable extent. In any case, it is obvious that hereafter City Councils will not change grades hastily, or consent to the necessary delays for any slight cause or small benefit expected to result from the change—It will be perceived that sections 38 to 44 inclusive or about the first third of the chapter are renumbered, and that 45 to 53 use original numbers. This is one of the infelicities attendant upon the passage of Acts at the heel of a session. The oversight was pointed out just before final passage, bnt too late to make the clerical change without endangering the passage of the Bill for lack of time. No harm, however, can possibly arise, the first set of sections 38 to 44 was defined, both in the title and amending act, to comprise a separate and *additional* Part in the original act. This latter set of sections 38 to 44 (with other from 45 to 53) is also defined, both in the title and amending act, to be certain "*new and additional* sections." Neither of the amending acts anywhere repeals anything as inconsistent, or at all. There can be no magic in section numbers. The act might commence with number 114 or any other number. But if there were such magic the only effect would be to add, one by one, the latest sections 38 to 44 to those previously so numbered. But such clumsy reading is unnecessary. Each amending act merely added new sections or a Part, and repealed nothing.

change or changes of grade shall be filed with the clerk of the City Council within thirty days from the first publication of the resolution of intention hereinbefore mentioned, the City Council shall thereafter declare such grades to be changed and established in conformity to said resolution of intention.

When no objections are filed.

Section 39. Within thirty days after the first publication of said notice, any person owning land in the district designated, and claiming damage by reason of such change of grade shall file a petition with the City Council, or the Clerk thereof, setting forth in such petition a copy of the notice, the fact of the petitioner's ownership, his Post Office address, the description and situation of the property claimed to be damaged, its market value and the estimated amount of damages over and above all benefits which the property would sustain by the proposed change if completed, and asking the appointment of commissioners to assess and report to the City Council the amount of damages and benefits that will be sustained by the property by reason of such change. The owners of two or more lots of land affected by such change may unite in the same petition; and when more than one petition is filed, the City Council may act upon all the petitions jointly. Each petition shall be verified by the oath of the petitioners therein named, or by the agent of such petitioners.

Petition of damage-claimants.

Verified.

Section 40. If the petition mentioned in the preceding section of this Act be filed as therein provided, the City Council shall fix a time and place for the hearing of the same and shall give notice thereof to said petitioner. A notice shall be deposited in the Post Office, at the place of hearing, at least five days before the time of hearing, and not less than thirty days after the first publication of the resolution of intention, postage prepaid thereon, and addressed to each of said petitioners at his Post office address as contained in said petition. Said notice shall designate the time and place of hearing of the petition, and shall notify the petitioner that the City Council will, at such hearing, take such evidence and hear such witnesses as he may produce in support of his petition. The City Council, or its committee, may hear such witnesses under oath, as may be deemed necessary at the hearing, which oath may be administered by any member of the Council, and shall thereupon proceed to act upon the petition; *provided*, that no action shall be taken upon said petition until proof, by affidavit, shall have been made of the mailing of the notice as provided herein.

Hearing of Petition.

Notice by mail.

Witnesses.

Section 41. If the City Council shall find that the petition

does not present a proper case for the payment of damage, it shall notify the petitioner, by a written notice, duly mailed to him at the Post Office address designated in his petition, that such petition is denied; and ten days after mailing such notice the City Council may proceed to change the grade the same as if no such petition were filed. If, after the hearing of the petition, the City Council shall, by its judgment thereon, decide that the petition presents a proper case for the payment of damages, it shall appoint three citizens, who are freeholders within the city, or city and county, and who are not interested in the land to be assessed, to assess the benefits and damages to each separate lot of land, as the same appears of record on the last assessment roll, within the limits designated in the resolution of intention.

Denial of petition.

Otherwise, Commission'rs are appointed.

Section 42. The Commissioners, when appointed, shall be sworn to make the assessments of benefits and damages to the best of their judgment and ability, without fear or favor, and that they have no interest in the controversy, nor in any of the land within the limits designated. Upon subscribing to the oath and filing the same, and a bond, to be approved by the City Council, in the penal sum of five thousand dollars, conditioned for the faithful discharge of their duties, with the City Council, the said Commissioners shall be qualified to discharge their duties in the premises.

Commissioners' oath.

Bond.

Section 43. The Commissioners, in company with a committee from the City Council appointed for that purpose, shall visit and inspect all the lots of land and improvements appurtenant thereto within the district affected by the change of grade. The Commissioners shall have power to subpœna witnesses to appear before them, and examine, under oath, which any one of them is authorized to administer, any witnesses produced before them by any party, touching the matter to be investigated, and such other witnesses as they may deem necessary to fully acquaint themselves with the actual amount of benefits and damages which will result to the respective parties interested in the proposed change.

Inspection of district:

Witnesses.

Section 44. The Commissioners having determined the damage which will be sustained by each petitioner in excess of all benefits, shall proceed to assess the whole amount thereof, together with the costs, charges and expenses of the proceedings, including the compensation of the Commissioners for their services (such compensation and expenses to be fixed by the City Council) ratably upon the several lots of land benefited within the limits of the district, so that the same

Assessment of damages, exceeding benefits.

shall be distributed according to the benefits produced by such change as nearly as possible. The Commissioners shall receive for their services not more than one hundred dollars per month, for a period not exceeding six months, unless such time be further extended by the City Council, and during the progress of their work shall make such report to the Council as the City Council may require.

Compensation.

Reports.

Section 45. The Commissioners shall make their report in writing, and shall subscribe to the same and file it with the City Council. In their said report they shall describe separately each piece of property which will sustain damage, stating the amount of damages which it will sustain over and above all benefits. They shall also give a brief description of each lot benefited within the designated limits, the name of the owner, if known, and the amount of benefit in excess of damage assessed against the same. When the amount of benefit and damage assessed to a lot is equal, such fact shall be stated in the report. In case the three Commissioners do not agree, the award agreed upon by any two of them shall be sufficient. In designating the lots to be assessed, reference may be had to a diagram of the property in the district affected, such diagram to be attached to and form a part of the report of the Commissioners.

Contents of Report.

Diagram

Section 46. If in any case the Commissioners find that conflicting claims of title exist, or shall be in ignorance or doubt as to the ownership of any lot or land, or of any improvements thereon, or of any interest therein, it shall be set down as belonging to unknown owners. Error in the designation of the owner or owners of any land or improvements, or of the particulars of their interest, shall not affect the validity of the assessment. On the filing of said report, the Clerk of said City Council shall give notice of such filing, by the publication for at least ten days, in one or more daily newspapers published and circulated in said city; or, if there be no daily newspaper by three successive insertions in a weekly or semi-weekly newspaper so published and circulated. Said notice shall also require all persons interested to show cause, if any, why such report should not be confirmed, before the City Council, on or before a day fixed by the City Council, and stated in said notice, which day shall not be less than twenty days from the first publication thereof.

Conflicting claims of title.

Unknown owners.

Errors.

Published notice of report.

Citation to show cause.

Section 47. All objections shall be in writing, and filed with the Clerk of the City Council, who shall, at the next meeting after the date fixed in the notice to show cause, lay the said objections, if any, before the City Council, which shall fix the

Objections.

time for hearing the same, of which the Clerk shall notify the objectors in the same manner as objectors to the original resolution of intention. At the time set, or at such other time as the hearing may be adjourned to, the City Council shall hear such objections and pass upon the same; and at such time, or such other time as may be fixed, shall proceed to pass upon such report, and may confirm, correct, or modify the same, or may order the Commissioners to make a new assessment, report, and plat, which shall be filed, notice given, and hearing had, as in the case of an original report.

Their hearing.

Decision by Council.

Section 48. The Clerk of said City Council shall forward to the Street Superintendent of the city a certified copy of the report, assessment, and plat, as finally confirmed and adopted by the City Council. Such certified copy shall thereupon be the assessment roll, the cost of which shall provided for by the Commissioners as a portion of the cost of the proceedings herein. Immediately upon receipt thereof by the Street Superintendent, the assessment therein contained shall become due and payable, and shall be a lien upon all the property contained or described therein.

Assessment Roll.

Lien.

Section 49. The Superintendent of Streets shall thereupon give notice, by publication for ten days in one or more daily newspapers published and circulated in said city, or city and county, or by two successive insertions in a weekly or semi-weekly newspaper so published and circulated, that he has received said assessment roll, and that all sums levied and assessed in said assessment roll are due and payable immediately, and that the payment of said sums is to be made to him within thirty days from the date of the first publication of said notice. Said notice shall also contain a statement that all assessments not paid before the expiration of said thirty days will be declared to be delinquent, and that thereafter the sum of five per cent upon the amount of each delinquent assessment, together with the cost of advertising each delinquent assessment, will be added thereto. When payment of any assessment is made to said Superintendent of Streets, he shall write the word "paid" and the date of payment opposite the respective assessment so paid, and the names of persons by or for whom said assessment is paid, and shall give a receipt therefor. On the expiration of said thirty days, all assessments then unpaid shall be and become delinquent, and said Superintendent of Streets shall certify such fact at the foot of said assessment roll, and shall add five per cent to the amount of each assessment so delinquent. The

Published notice of assessment.

Payments within 30 days.

Penalty for delinquency.

said Superintendent of Streets shall, within five days from the date of such delinquency, proceed to advertise and collect the various sums delinquent, and the whole thereof, including the cost of advertising, which last shall not exceed the sum of fifty cents for each lot, piece, or parcel of land separately assessed, by the sale of the assessed property in the same manner as is or may be provided for the collection of State and county taxes; and after the date of said delinquency, and before the time of such sale herein provided for, no assessment shall be received unless at the same time the five per cent added thereto, as aforesaid, together with the costs of advertising then already incurred, shall be paid therewith. Said list of delinquent assessments, with a notice of the time and place of sale of the property affected thereby, shall be published daily for five days in one or more daily newspapers published and circulated in such city, or by at least two insertions in a weekly newspaper so published and circulated, before the day of sale for such delinquent assessment. Said time of sale must not be less than seven days from the date of the first publication of said delinquent assessment list, and the place must be in or in front of the office of said Superintendent of Streets. All property sold shall be subject to redemption for one year, and in the same manner as in sales for delinquent State and county taxes; and the Superintendent of Streets shall, if there is no redemption, make and deliver to the purchaser at such sale a deed conveying the property sold, and may collect for each certificate fifty cents, and for each deed one dollar. All provisions of the law in reference to the sale and redemption of property, for delinquent State and county taxes, in force at any given time, shall also, then, so far as the same are not in conflict with the provisions of this Act, be applicable to the sale and redemption of property for delinquent assessments hereunder, including the issuance of certificates and execution of deeds. The deed of the Street Superintendent made after such sale, in case of failure to redeem, shall be prima facie evidence of the regularity of all proceedings hereunder, and of title in the grantee. The Superintendent of Streets shall from time to time pay over to the City Treasurer all moneys collected by him on account of any such assessments. The City Treasurer shall, upon receipt thereof, place the same in a separate fund, designating such fund by the name of the street, square, lane, alley, court, or place, for the change of grade for which the assessment was made. Payments shall be made from said fund to the parties

Advertising delinquency.

Sale of lots delinquent.

Redemption.

Deed.

Evidence by the deed.

Fund.

Warrants.

entitled thereto, upon warrants signed by the Commissioners, or a majority of them.

Section 50. When sufficient money is in the hands of the City Treasurer, in the fund devoted to the proposed work or improvement, to pay for the damage to the land and improvements damaged, and when, in the discretion of the commissioners, or a majority of them, the time shall have come to make payments, it shall be the duty of the Commissioners to notify the owner, possessor, or occupant of any land, or improvements thereon, to whom damages shall have been awarded, that a warrant has been drawn for the payment of the same, and that he can receive such warrant at the office of such Commissioners; such notification to be made by depositing a notice, postage paid, in the Post Office, addressed to his last known place of abode or residence. If, at the expiration of thirty days after the deposit of such notice, he shall not have applied for such warrant, the warrant so drawn shall be deposited with the County Treasurer, and be delivered to such owner, possessor, or occupant, upon written demand therefor by him or his legal representatives.

Payments from the fund.

Section 51. The Treasurer shall pay such warrants out of the appropriate fund, and not otherwise, in the order of their presentation; *provided*, that warrants for land or improvements damaged shall have priority over warrants for charges and expenses; and the Treasurer shall see that sufficient money is and remains in the fund to pay all warrants of the first class before paying any of the second.

Order of paying Warrants.

Preference.

Section 52. Upon payment to the City Treasurer of the amount of the assessment sufficient to pay for the damage to land and improvements, and after the notice required by section fifty of this Act has been given, the City Council shall declare the grade to be changed in accordance with the resolution of intention, and said change of grade shall thereupon be established.

Change of grade finally established.

Section 53. The provisions of this Act shall be liberally construed to promote the objects thereof. This Act shall take effect and be in force from and after its passage.

STREET OPENING, ETC.

"An Act to provide for laying out, opening, extending, widening, straightening, or closing up in whole or in part any street, square, lane, alley, court or place within municipalities, and to condemn and acquire any and all land and property necessary or convenient for that purpose.—Approved March 6, 1889." May be found on pp. 70–78 of the Statutes of 1889.

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Reference to Statute of 1889, pp. 71-78.